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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM357; Special Conditions No. 25–347–SC]

Special Conditions: Boeing Model 737–900ER series airplanes; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special condition is issued for the Boeing Model 737–900ER airplane. This airplane will have a novel or unusual design feature(s) associated with the interaction of systems and structures. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Todd Martin, Aerospace Engineer, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1232; electronic mail *Todd.Martin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2002, The Boeing Company, PO Box 3707, Seattle, Washington 98124, applied for an amendment to Type Certificate No. A16WE, to include the new Model 737–900ER. The Model 737–900ER, which is a derivative of the Model 737–900 currently approved under A16WE, is a large transport airplane with two flight crew and the capacity to carry 215 passengers. The airplane is powered by two CFMI CFM56–7 series turbofan engines.

Type Certification Basis

Under the provisions of § 21.101, Boeing must show that the Model 737–900ER meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–108, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into the Type Certificate No. A16WE after type certification approval of the 737–900ER.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to this proposed special condition. Refer to Type Certificate No. A16WE for a complete description of the certification basis for this model airplane.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 737–900ER because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–900ER must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, they are published for comment under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Model 737–900ER airplane will incorporate novel or unusual design features. This special condition addresses equipment that may affect the airplane's structural performance, either directly or as a result of failure or malfunction.

This proposed special condition is identical or nearly identical to those previously required for type certification of other Boeing airplane models. The special condition was derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry.

Discussion

In addition to the requirements of part 25, subparts C and D, the following special condition applies:

Interaction of Systems and Structures

The Boeing Model 737–900ER is equipped with systems that may affect the airplane's structural performance either directly or as a result of failure or malfunction. The effects of these systems on structural performance must be considered in the certification analysis. This analysis must include consideration of normal operation and of failure conditions with required structural strength levels related to the probability of occurrence.

Discussion of Comments

Notice of proposed special conditions No. 25–06–11–SC for Boeing Model 737–900ER airplanes was published in the **Federal Register** on October 31, 2006 (71 FR 63718). A combined set of comments was received from the United States Air Force and the United States Navy.

As noted previously, special conditions are prescribed under the provisions of § 21.16 when current regulations ''do not contain adequate or appropriate safety standards * * * because of a novel or unusual design feature.''

For several decades, transport category airplanes have employed automatic and electronic flight control systems, including load alleviation systems, flutter suppression systems, and stability augmentation systems. Failures in any of these systems may affect how the airplane will respond to maneuver, gust, and high speed conditions. That is, the loads introduced

to the airplane may increase as a result of failures in these systems, or the flutter capability of the airplane may be reduced.

Since current regulations do not specify design loads criteria, including a safety factor for system failures, a special condition is needed to address such failures. To address the effects of system failures on the structural and flutter capability of the airplane, the FAA developed a special condition, which has been applied in essentially the same form since 1989, and which is proposed for the Boeing Model 737–900ER.

Comment 1: The commenters recommended that the proposed special condition not be implemented as a general rule.

FAA response: At this time we are not implementing the proposed special condition as a general rule. The ''Conclusion'' section of the proposed special condition (No. 25–06–11–SC) states that ''This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.'' We are considering rulemaking to incorporate this special condition into 14 CFR part 25. If we do propose changes to 14 CFR part 25 the public will have the opportunity to comment on that rulemaking action. We have not changed this special condition as a result of this comment.

Comment 2: The commenters recommended that systems failures be addressed individually and that exceptions to existing standards and rules be reviewed on a case-by-case basis.

FAA response: We do not agree with this recommendation. Although the proposed special condition allows the use of safety factors of less than 1.5, we do not regard this as an exception to the current regulation. The current CFR regulation does not specify design loads criteria, including a safety factor, for system failures. This is why special conditions are needed. We have not changed this special condition as a result of this comment.

Comment 3: The commenters noted that Figure 1 in the proposed special condition, which is a plot of safety factor versus failure probability, shows that for failure occurrences more frequent than 10^{-5} per flight hour, the factor of safety is equal to 1.5 and cannot be reduced. However, the text of the proposed rule indicates in several places that this probability threshold is 10^{-3}.

FAA response: We infer that the commenters are suggesting there are errors in the proposed special condition and that the text should be revised to change the 10^{-3} references to 10^{-5}. We do not agree that the references to 10^{-3} in the text are errors. The three references to 10^{-3} in the text of the proposed special condition do not apply to Figure 1. The first two references to the 10^{-3} probability threshold are notes that apply only to Figures 2 and 3 of the proposed special condition. The third reference to 10^{-3} applies to subsequent failures following dispatch with a known failure. We have not changed this special condition as a result of this comment.

Comment 4: The commenters are concerned that the definition of the term ''Q_j = Probability of being in a failure condition,'' is too vague and that the probability of being in a failure mode has to be more clearly defined to avoid potential loopholes. The term appears in the proposed special condition as follows: ''Q_j = Probability of being in a failure condition, which is defined as P_j = Probability of failure occurrence multiplied by T_j = Average time spent in failure condition.'' The concern is that an artificially low value of T_j would result in an inappropriate value of Q_j. As an example, for a spoiler failure on landing approach, the Q_j variable would be very small since you only spend a few minutes in that condition.

FAA response: We believe that the definitions of probability and exposure time are sufficiently clear, and that their use is appropriate in this special condition. The term T_j applies to ''continuation of flight'' failures, and thereby accounts for the maximum possible exposure period of the failure. If a failure is not detected, then T_j equals the average latency period for that failure mode. This results in a high value of T_j (potentially hundreds of hours), a high value of Q_j, and little or no reduction of the safety factor. If the failure was detected, then its exposure would be limited and its effects mitigated by pilot actions. In this case, a reduced value of Q_j and a corresponding reduced safety factor is appropriate.

Comment 5: The commenters stated that the net effect of the proposed special condition would be a reduction in reliability when compared to the current practice for defining failure condition safety factors. The commenters also stated that the current practice has a historical track record of success. The commenters also noted that the allowed reduction of the safety factor is not analytically nor empirically justified.

FAA response: We do not believe that this special condition reduces reliability or structural integrity when compared to the current practice for defining failure condition safety factors. The current regulation does not specify design loads criteria, including a safety factor, for system failures. Special conditions are needed to define these criteria. Also, the intent of this special condition has been applied for over ten years. Prior to this special condition we outlined similar criteria in Advisory Circular 25.672–1, *Active Flight Controls*, dated November 15, 1983.

While not analytically precise, we believe that reduced safety factors for low probability events are justified. Safety factors provide an additional margin above limit load capability. For low probability events, less margin is needed because these events will occur less often. For high probability events, more margin is needed, therefore, the full 1.5 safety factor is required. The relationship between the probability and the severity of a failure condition is similar to that used in a system safety assessment: High probability events must only have minor consequences, whereas low probability events may have major or hazardous consequences. In all cases, the objective is that no failure or combination of failures may be catastrophic.

Comment 6: The commenters recommended that the process to be used to determine the reliability of a system be defined. The commenters also recommended that for each airplane model, the airframe manufacturer document all of the systems and structure subject to the proposed special conditions.

FAA response: We believe that the process for determining the reliability of a system is well defined in this special condition because the special condition states that the failure condition and probabilistic terms are the same as those defined in § 25.1309, *Equipment, systems, and installations.* That regulation's advisory material, Advisory Circular 25.1309–1A, *System Design and Analysis*, dated June 21, 1988, provides an acceptable process for determining the reliability of systems (that is, their probability of failure).

We also note that as part of the certification process, airframe manufacturers are required to document the systems and structures subject to this special condition.

Comment 7: The commenters stated that in Figure 3 of the proposed special condition, it is not clear how the flutter clearance speed should be determined when the probability of being in a failure condition, Q_j, is between 1 and 10^{-5}.

FAA response: Figure 3 of this special condition shows that when the

probability of being in the failure condition, Q_j, is equal to one, the flutter clearance speed is V″, which is the speed as defined by § 25.629(b)(1). (This is the same as the clearance speed with no failures.) When $Q_j = 10^{-5}$, the clearance speed is V′, which is the clearance speed with failures, as defined by § 25.629(b)(2). If Q_j is between 1 and 10^{-5}, then the clearance speed varies linearly between V″ and V′. This can be calculated as $V = V'' + 0.2(\log Q_j)(V''-V')$.

Comment 8: The commenters noted that the United States Air Force threshold for allowing a reduced clearance speed is 10^{-7} per flight hour. A note accompanying Figure 3 in the proposed special conditions indicates that the flutter clearance speed may not be less than V″ if P_j is greater than 10^{-3} per flight hour. V″ is the clearance speed with no failures, which includes a 15% margin on the design dive speed, V_D/M_D. The commenters suggested that the 10^{-7} per flight hour threshold is more appropriate than the 10^{-3} per flight hour threshold because the flutter analysis may inaccurately predict a critical flutter mechanism under a failed condition. The commenters also pointed out that failure conditions are not typically flutter tested in flight.

FAA response: We believe that the flutter clearance speeds for failures are adequate as defined. Flutter clearance speeds for failure cases are defined in both § 25.629 and in these special conditions. The flutter clearance speed for failure cases defined in § 25.629 has not changed significantly since Amendment 25–0, issued in 1965. The service history on products certificated to Amendment 25–0, or later, has been acceptable regarding the effects of failures on flutter. The flutter clearance speed defined in these special conditions exceeds that defined in § 25.629 (and is therefore more conservative) for all failure conditions whose probability is greater than 10^{-5}.

No changes were made to these special conditions as a result of these comments. The special conditions are adopted as proposed.

Applicability

As discussed above, this special condition is applicable to the Boeing Model 737–900ER. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, this special condition would apply to that model as well.

Effective Upon Issuance

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 737–900ER is imminent, the FAA finds that good cause exists to make this special condition effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Condition

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737–900ER airplanes.

Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following proposed special condition would apply:

a. For airplanes equipped with systems that affect structural performance—either directly or as a result of a failure or malfunction—the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D. Paragraph b, below, must be used to evaluate the structural performance of airplanes equipped with these systems.

b. Interaction of Systems and Structures.

(1) General: The following criteria must be used for showing compliance with this special condition for interaction of systems and structures and with § 25.629 for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in this special condition.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this paragraph.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations and avoidance of severe weather conditions).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, and extremely improbable) used in this special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309. However, this special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

(2) Effects of Systems on Structures.

(a) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of

control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered, when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

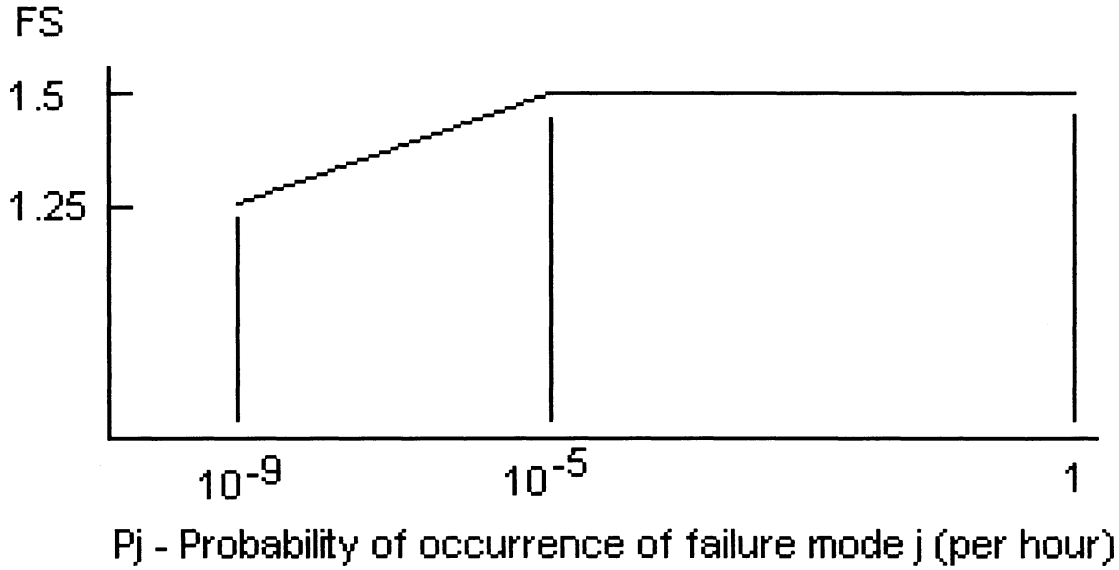
(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(1)(i) of this section. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C, freedom from aeroelastic instability must be shown to those increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C or the speed limitation prescribed for the remainder of the flight must be determined:

(A) the limit symmetrical maneuvering conditions specified in §§ 25.331 and in 25.345.

(B) the limit gust and turbulence conditions specified in §§ 25.341 and in 25.345.

(C) the limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

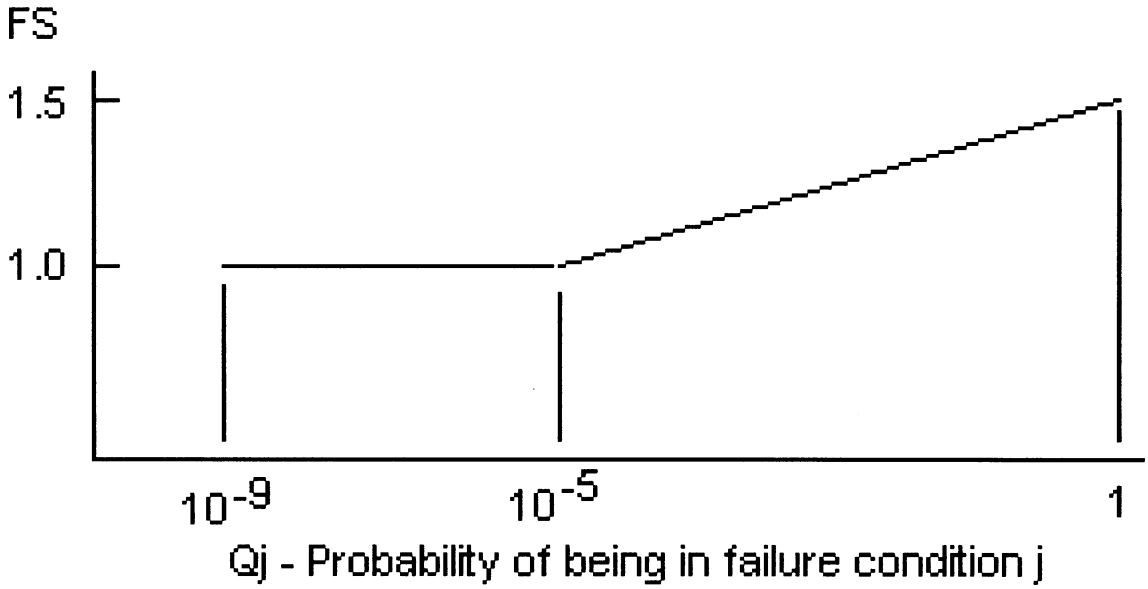
(D) the limit yaw maneuvering conditions specified in § 25.351.

(E) the limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (c)(2)(i) of this special condition multiplied by a factor of safety, depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

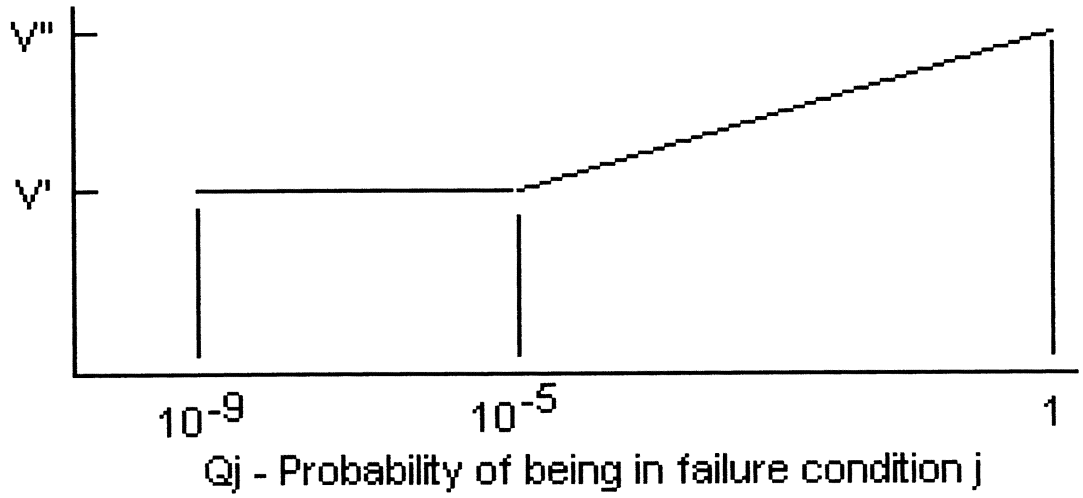
(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(2)(ii). For pressurized cabins, these loads must be defined combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).
V″ = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of this Part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components the failures of which are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25 or flutter margins below V″ must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this Special Condition must be met, including the provisions of paragraph (b), for the dispatched condition and paragraph (c) for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed, if the subsequent system failure rate is greater than 1E–3 per flight hour.

Issued in Renton, Washington, on March 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5508 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[DoD–2006–OS–0022]

RIN 0790–AI00

Defense Logistic Agency Privacy Program

AGENCY: Department of Defense.

ACTION: Amendment of final rule.

SUMMARY: The Defense Logistic Agency recently altered an existing Privacy Act system of records notice identified as S500.60, entitled ''DLA Hotline Program.'' As part of the alteration, the system identifier and the system name were revised; therefore, the existing exemption rule for this particular system of records is being amended to reflect the new system identifier and the new system name. No other changes have been made to the existing rule.

DATES: *Effective Date:* March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 323 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 323 Privacy.

■ Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR Part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. In Appendix H to part 323, the headings of paragraphs e. and e.1., are revised to read as follows:

Appendix H to Part 323, DLA Exemption Rules

* * * * *

e. ID: S500.60 (Specific exemption).

1. System name: DLA Hotline Program Records. * * *

* * * * *

March 16, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–5233 Filed 3–23–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM25

Vocational Rehabilitation and Employment Program—Initial Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule in this document a proposed rule concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. This final rule is intended to reflect changes in law regarding initial evaluations, to reflect VA's interpretation of applicable law and its determinations of procedures appropriate for use in the initial evaluation, and to improve readability.

DATES: *Effective Date:* This final rule is effective April 25, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hawkins, Vocational Rehabilitation Counselor, (202) 273–6923, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 28, 2006 (71 FR 50872), VA proposed to amend the regulations in 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. In this document, VA is amending those Vocational Rehabilitation regulations to reflect changes in law regarding initial evaluations and VA's interpretation of applicable law and its determination of procedures appropriate for use in the initial evaluation. We are also making changes in those regulations to improve readability. In addition, we are making a nonsubstantive conforming change in 38 CFR Part 21, Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects.

We provided a 60-day comment period that ended October 27, 2006. No comments were received. Based on the rationale set forth in the proposed rule and this document, we now adopt the provisions of the proposed rule as a final rule without change.

Paperwork Reduction Act of 1995

This rule contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) has approved collection of information provisions that are related to the provisions of 38 CFR 21.50 under OMB control number 2900–0009 (entitled ''Disabled Veterans Application for Vocational Rehabilitation and 38 CFR 21.30'') and has approved collection of information provisions that are related to the

provisions of §§ 21.50 through 21.52 under OMB control number 2900–0092 (entitled ''Counseling Record—Personal Information'').

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 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 will have no such effect on State, local, and tribal governments, or on the private sector.

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 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.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to not be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for programs affected by this rule are 64.116, Vocational Rehabilitation for Disabled Veterans; 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 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: March 20, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subparts A and M) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

■ 1. Revise the authority citation for part 21, subpart A to read as follows:

Authority: 38 U.S.C. 501(a), ch. 31, and as noted in specific sections.

■ 2. Revise § 21.50 to read as follows:

§ 21.50 Initial evaluation.

(a) *Entitlement to an initial evaluation.* VA will provide an initial evaluation to an individual who:

(1) Applies for benefits under 38 U.S.C. chapter 31; and

(2) Meets the service-connected disability requirements of § 21.40.

(Authority: 38 U.S.C. 3101(9), 3106)

(b) *Determinations to be made by VA during the initial evaluation.* A counseling psychologist (CP) or vocational rehabilitation counselor (VRC) will determine:

(1) Whether the individual has an employment handicap as determined in accordance with this section and § 21.51;

(2) Whether an individual with an employment handicap has a serious employment handicap as determined in accordance with this section and § 21.52; and

(3) Whether the achievement of a vocational goal is currently reasonably feasible as described in § 21.53.

(Authority: 38 U.S.C. 3102, 3103)

(c) *Factors for assessment as part of the initial evaluation.* In making the determinations under paragraph (b) of this section, the following factors will be developed and assessed:

(1) The handicapping effects of the individual's service-connected and nonservice-connected disability(ies) on employability and on independence in daily living;

(2) The individual's physical and mental capabilities that may affect employability and ability to function independently in daily living activities in family and community;

(3) The impact of the individual's identified vocational impairments on the individual's ability to prepare for, obtain, and keep suitable employment;

(4) The individual's abilities, aptitudes, and interests;

(5) The individual's personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment); and

(6) Other factors that may affect the individual's employability.

(Authority: 38 U.S.C. 3106(a))

(d) *Need for cooperation in evaluation.* The individual's cooperation is essential during the initial evaluation. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will discontinue the initial evaluation. A redetermination of entitlement as described in § 21.58 will be made in the case of an individual whose program has been discontinued due to failure to cooperate.

(Authority: 38 U.S.C. 3111)

■ 3. Revise § 21.51 to read as follows:

§ 21.51 Determining employment handicap.

For the purposes of § 21.50, an employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(a) *Vocational impairment.* The individual has a vocational impairment; that is, an impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests.

(b) *Effects of impairment not overcome.* The individual has not overcome the effects of the individual's impairment of employability through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This situation includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(c) *Contribution of the service-connected disability(ies) to the individual's overall vocational impairment.* (1) Except as provided in paragraph (c)(3) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap.

(2) When determining the individual's overall vocational impairment, the CP or VRC will consider the factors identified in § 21.50(c).

(3) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment.

(Authority: 38 U.S.C. 3101, 3102)

■ 4. Revise § 21.52 to read as follows:

§ 21.52 Determining serious employment handicap.

(a) *Requirements for determining serious employment handicap.* For each individual who is found to have an employment handicap, a CP or VRC must make a separate determination of whether the individual has a serious employment handicap. For the purposes of an initial evaluation under § 21.50, a serious employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(1) *Significant vocational impairment.* The individual has a significant vocational impairment; that is, a significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests, considering the factors described in § 21.50 and paragraph (b) of this section.

(2) *Effects of significant impairment not overcome.* The individual has not overcome the effects of the significant vocational impairment through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

(Authority: 38 U.S.C. 3101)

(ii) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall significant vocational impairment.

(b) *Factors for assessment during the initial evaluation, when determining whether a significant vocational impairment exists.* The combination of all restrictions and their effects on the individual define the extent of the vocational impairment and its significance. When determining whether the individual has a significant vocational impairment, VA will develop and assess the following factors and their effects:

(1) Number of disabling conditions;

(2) Severity of disabling condition(s);

(3) Existence of neuropsychiatric condition(s);

(4) Adequacy of education or training for suitable employment;

(5) Number, length, and frequency of periods of unemployment or underemployment;

(6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;

(7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;

(8) Negative attitudes toward individuals with disabilities and other evidence of restrictions on suitable employment, such as labor market conditions; discrimination based on age, race, gender, disability or other factors; alcoholism or other substance abuse; and

(9) Other factors that relate to preparing for, obtaining, or keeping employment consistent with the individual's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3102, 3106)

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

■ 5. Revise the authority citation for part 21, subpart M to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

§ 21.8032 [Amended].

■ 6. In § 21.8032, amend paragraph (a) by removing ''§§ 21.50(b)(5)'' and adding, in its place, ''§§ 21.50(b)(3)''.

[FR Doc. E7–5432 Filed 3–23–07; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2006–0386; FRL–8291–6]

Approval and Promulgation of Implementation Plans; Texas; El Paso County Carbon Monoxide Redesignation to Attainment, and Approval of Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On January 23, 2007 (72 FR 2776), EPA published a direct final rule approving the redesignation of the El Paso, Texas, carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and the CO maintenance plan with its associated Motor Vehicle Emission Budgets (MVEBs). EPA also found the MVEBs adequate. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received relevant adverse comment by February 22, 2007, EPA would publish a timely withdrawal in the **Federal Register**. EPA

subsequently received a timely relevant adverse comment on the direct final rule. Therefore, EPA is withdrawing the direct final approval, as well as the finding of adequacy for the MVEBs. EPA will address the comment in a subsequent final action based on the parallel proposal also published on January 23, 2007 (72 FR 2825).

DATES: The direct final rule published on January 23, 2007 (72 FR 2776), is withdrawn as of March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section, (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov.*

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

40 CFR Part 82

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 16, 2007.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ Accordingly, the amendments to 40 CFR 52.2270(e) and to 40 CFR 81.344 published in the **Federal Register** on January 23, 2007 (72 FR 2776), which were to become effective on March 26, 2007, are withdrawn.

[FR Doc. E7–5482 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R02–RCRA–2006–0518; FRL–8278–2]

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State regulations that will be subject to EPA's inspection and enforcement. This rule does not incorporate by reference the New York hazardous waste statutes. The rule codifies in the regulations the prior approval of New York's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations. In addition, this document corrects errors made in the program revision table in Section G published in the January 11, 2005 **Federal Register** authorization document for New York.

DATES: This regulation is effective May 25, 2007, unless EPA receives adverse written comment on this regulation by the close of business April 25, 2007. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of May 25, 2007 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–RCRA–2006–0518, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: infurna.michael@epa.gov.*
- *Fax:* (212) 637–3056.
- *Mail:* Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.
- *Hand Delivery or Courier:* Deliver your comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R02–RCRA–2006–0518. EPA's policy is that all comments received will be included in the public docket without change, 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 Federal 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 or any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm).*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You can inspect the records related to this codification effort in the EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007, Phone number: (212) 637–3185. The public is advised to call in advance to verify the business hours.

FOR FURTHER INFORMATION CONTACT: Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd floor, New York, NY 10007; telephone number (212) 637–4177; fax number: (212) 637–3056; e-mail address: *infurna.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Correction

There were typographical errors and omissions in the table published as part of the January 11, 2005 (70 FR 1827) authorization document for New York. The affected entries for that table are

shown in the table below. The corrections are **bolded** and *italicized.*

Description of Federal requirement (revision checklists [1])	Analogous State regulatory authority [2]
* * * *	* * *
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes (5/26/98, 63 FR 28556; Revision Checklist 167 A).	6 NYCRR 376.1(b)(***1***)(xii), 376.1(c)(4), 376.3(b)(1)–(3), (5) and (6), 376.4(a)(5) and (8), 376.4(a)/Table, and 376.4(j)/Table UTS. (More stringent provisions: 376.3(b)(5)(iii).)
* * * *	* * *
Hazardous Waste Combustors; Revised Standards; Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions (6/19/98, 63 FR 33782; Checklist 168).	6 NYCRR 371.1(e)(1)(***xvi***), 371.4(i), 373–1.3(g)(2)(viii), 373–1.7(c)(12)(iii), 373–1.7(j) introductory paragraph, and 371.7(j)(1). (More stringent provisions: 373–1.7(c)(12)(iii).)
* * * *	* * *

II. Incorporation By Reference

A. What Is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the Federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What Is the History of the Authorization and Codification of New York's Hazardous Waste Management Program?

New York initially received final authorization for its hazardous waste management program, effective on May 29, 1986 (51 FR 17737) to implement its base hazardous waste management program. Subsequently, EPA authorized revisions to the State's program effective July 3, 1989 (54 FR 19184), May 7, 1990 (55 FR 7896), October 29, 1991 (56 FR 42944), May 22, 1992 (57 FR 9978), August 28, 1995 (60 FR 33753), October 14, 1997 (62 FR 43111), January 15, 2002 (66 FR 57679) and March 14, 2005 (70 FR 1825, as corrected on April 5, 2005 (70 FR 17286)). EPA first codified New York's authorized hazardous waste program effective September 30, 2002. In this action, EPA is revising Subpart HH of 40 CFR part 272 to include the recent authorization revision actions effective March 14, 2005.

C. What Decisions Have We Made in This Action?

Today's action codifies EPA's authorization of revisions to New York's hazardous waste management program. This codification reflects the State program in effect at the time EPA authorized revisions to the New York hazardous waste program in a final rule dated January 11, 2005 (70 FR 1825; and corrected on April 5, 2005 (70 FR 17286)). The rule incorporates by reference the most recent version of the State's authorized hazardous waste management regulations. This action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program. EPA is not requesting comments on its decisions published in the **Federal Register** notices referenced in section B of this document concerning revisions to the authorized program in New York.

EPA is incorporating by reference the authorized revisions to the New York hazardous waste program by revising Subpart HH to 40 CFR part 272. 40 CFR 272.1651 previously incorporated by reference New York's authorized hazardous waste regulations, as amended through March 15, 1999, plus amendments to selected provisions on November 15, 1999 and January 31, 2000, as well as selected provisions as found in the New York regulations dated January 31, 1992 and January 14, 1995. Section 272.1651 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.1651 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which were evaluated as part of the approval process of the hazardous waste management program under Subtitle C of RCRA.

D. What Is the Effect of New York's Codification on Enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not incorporating by reference New York's inspection and enforcement authorities nor are those authorities part of New York's approved State program which operates in lieu of the Federal program. 40 CFR 272.1651(c)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of New York's procedural and enforcement authorities. New York's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What State Provisions Are Not Part of the Codification?

The public is reminded that some provisions of New York's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Unauthorized amendments to authorized State provisions;

(3) New unauthorized State requirements; and

(4) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are ''broader in scope'' than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1651(c)(3) lists the New York statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. This action updates that list for ''broader in scope'' provisions. While ''broader in scope'' provisions are not part of the authorized program and cannot be enforced by EPA; the State may enforce such provisions under State law.

Additionally, New York's hazardous waste regulations include amendments which have not been authorized by EPA. Since EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by EPA include amendments to previously authorized State regulations as well as new State requirements.

In those instances where New York has made unauthorized amendments to previously authorized sections of State code, EPA is identifying in 40 CFR 272.1651(c)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by EPA. Those unauthorized portions of the State regulations are not federally enforceable. Thus, notwithstanding the language in the New York hazardous waste regulations incorporated by reference at 40 CFR 272.1651(c)(1), EPA will only enforce those portions of the State regulations that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 272.1651(c)(4) (i.e., without the unauthorized amendments) is compiled as a separate document, Addendum to the EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 2005. This document is available from EPA Region 2, EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York 10007, Phone number: (212) 637–3185.

State regulations that are not incorporated by reference in today's rule at 40 CFR 272.1651(c)(1), or that are not listed in 40 CFR 272.1651(c)(3) (''broader in scope'') or 40 CFR 272.1651(c)(4) (''unauthorized amendments to authorized State provisions''), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

F. What Will Be the Effect of Federal HSWA Requirements on the Codification?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirement implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

III. Statutory and Executive Order Reviews

This rule codifies EPA-authorized hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget (OMB) has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act—This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act—This rule codifies New York's authorized hazardous waste management regulations in the CFR and does not impose new burdens on small entities. Accordingly, I certify that this action 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.*).

4. Unfunded Mandates Reform Act—Because this rule codifies pre-existing State hazardous waste management program requirements which EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, 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).

5. Executive Order 13132: Federalism—Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (i.e., substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government). This action codifies existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA.

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—Executive Order 13175 (65 FR 67249, November 6, 2000) does not apply to this rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, or

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).

7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

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

9. National Technology Transfer Advancement Act—The requirements being codified are the result of New York's voluntary participation in EPA's State program authorization process under RCRA Subtitle C. 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.

10. Executive Order 12988—As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), EPA has taken the necessary steps in this action to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*, as amended) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective May 25, 2007.

List of Subjects in 40 CFR Part 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 4, 2007.

Alan J. Steinberg,

Regional Administrator, EPA Region 2.

■ For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart HH is amended by revising § 272.1651 to read as follows:

§ 272.1651 New York State-Administered Program: final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New York has final authorization for the following elements as submitted to EPA in New York's base program application for final authorization which was approved by EPA effective on May 29, 1986. Subsequent program revision applications were approved effective on July 3, 1989, May 7, 1990, October 29, 1991, May 22, 1992, August 28, 1995, October 14, 1997, January 15, 2002 and March 14, 2005.

(b) The State of New York has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The New York regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the New York regulations that are incorporated by reference in this paragraph from West Group, 610 Opperman Drive, Eagan, MN 55123, ATTENTION: D3–10 (Phone #: 1–800–328–9352). You may inspect a copy at EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007 (Phone number: (212) 637–3185), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) The Binder entitled ''EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated March 2005.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2004 Cumulative Pocket Part: sections 1–0303(18), 3–0301(1) (introductory paragraph); 3–0301(1)(a) and (b); 3–0301(1)(m); 3–0301(1)(o); 3–0301(1)(w); 3–0301(1)(x); 3–0301(1)(cc); 3–0301(2) introductory paragraph; 3–0301(2)(a), (b), (d) through (j), (l), (m) and (q); 3–0301(2)(z); 3–0301(4); 19–0301(1) (except 19–0301(c), (e) and (f)); 19–0303(1) through (3); 19–0304; 27–0105; 27–0701; 27–0703; 27–0705; 27–0707 (except 27–0707(2-c)); 27–0711; 27–0900 through 27–0908; 27–0909 (except 27–0909(5)); 27–0910 through 27–0922; 27–1105;70–0101; 70–0103; 70–0105 (except 70–0105(3) and 70–0105(6)); 70–0107(1) and (2); 70–0107(3) (except 70–0107(3)(a) through (k), (m) and (n)); 70–0109; 70–0113; 70–0115 (except (2)(c) and (d)); 70–0117; 70–0119; 70–0121; 71–0301; 71–1719; 71–2705; 71–2707; 71–2709 through 71–2715; 71–2717; 71–2720; and 71–2727.

(iii) McKinney's Consolidated Laws of New York, Book 1, Executive Law (EL), Article 6: section 102.

(iv) McKinney's Consolidated Laws of New York, Book 46, Public Officers Law (POL), as amended through 2004: sections 87 and 89 (except the phrase ''and one-a'' at 89(5)(a)(3), and 89(5)(a)(1–a)).

(v) McKinney's Consolidated Laws of New York, Book 7B, Civil Practice Law and Rules (CPLR), as amended through 2004: sections 1013, 6301; 6311; and 6313.

(vi) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as amended through April 10, 2004: sections 372.1(f); 373–1.1(f) and (g); 373–1.4(b); 373–1.4(d) through (f); 373–1.6(c); 621.1 through 621.4; 621.5 (except (d)(5), (d)(6)(i), (d)(7)(i)(a), (d)(7)(i)(c) and (d)(9)); 621.6 (except (b), (d)(4) and (d)(5)); 621.7; 621.8; 621.9 (except (a)(5), (c)(2) and (e)(2)); 621.10; 621.11 (except (d)); 621.12 through

621.15; and 621.16 (except (b), (d) and (e)).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2004 Cumulative Pocket Part: sections 27–0301; 27–0303; 27–0305; 27–0307; 27–0909(5); 27–0923; 27–0925 and 27–0926.

(ii) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as amended through April 10, 2004: Section 371.4(e); 372.3(a)(1); 372.3(a)(4); 372.3(b)(6)(iv); 372.3(d)(3); 373–1.1(d)(1)(x); 373–1.4(c); 373–2.15(a)(2); and 374–3.4(a)(2).

(iii) Throughout New York's hazardous waste regulations, the State cross-references Part 364, which sets forth additional transporter requirements including permit and liability requirements (for examples, see 6 NYCRR sections 372.2(b)(8), 373–1.7(h)(3), 374–3.3(i)(1) and (2), 374–3.4(a) and 374–3.6(a)(1)). The transporter permit and liability requirements are broader in scope than the Federal program.

(iv) New York did not adopt an analog to 40 CFR 261.4(g) that excludes certain dredged materials from the State definition of hazardous waste. Instead, the State subjects these materials to full regulation as hazardous wastes.

(v) New York State regulations do not incorporate the Mineral Processing Secondary Materials Exclusion at 40 CFR 261.4(a)(17) and the related changes affecting 40 CFR 261.2(c)(3) and (c)(4)/Table, and 40 CFR 261.2(e)(1)(iii). Since New York did not adopt the exclusion at 40 CFR 261.4(a)(17) the State has a broader in scope program because the effect is to include materials that are not considered solid waste by EPA.

(4) *Unauthorized State Amendments.* (i) The authorized provisions at sections 371.1(c)(7), 373–1.3(d)(3), and 373–2.8(a)(3) of 6 NYCRR, as amended through April 10, 2004, include amendments that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the New York hazardous waste regulations incorporated by reference at paragraph (b)(1)(i) of this section, EPA will enforce the State regulations that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the following Table:

TITLE 6.—NEW YORK CODES, RULES AND REGULATIONS (6 NYCRR)

State Citation	Description	Effective date
371.1(c)(7)	Definition of Solid Waste. Documentation of claims for exemption	
373–2.8(a)(3)	Submission of applications.	
373–1.3(d)(3)	Financial Requirements. States and Federal government are exempt from the requirements of this section.	

(ii) The actual State regulatory text authorized by EPA (*i.e.*, without the unauthorized amendments) is available as a separate document, *Addendum to the EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 2005.* This document is available from EPA Region 2, EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York 10007, Phone number: (212) 637–3185.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 2 and the State of New York, signed by the Commissioner of the State of New York Department of Environmental Conservation on July 20, 2001, and by the EPA Regional Administrator on January 16, 2002, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of New York in 1985 and revisions, supplements and addenda to that Statement dated August 18, 1988, July 26, 1989, August 15, 1991, October 11, 1991, July 28, 1994, May 30, 1997, February 5, 2001, and April 2, 2004, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''New York'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New York

The regulatory provisions include:

Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as amended through April 10, 2004.

Please note the following:

(1) The State's official regulations, as amended through April 10, 2004, contain typographical and printing errors that were not in the State's regulations submitted for authorization. New York subsequently corrected these errors in its official ''Supplement'', dated July 15, 2005, filed with the New York Secretary of State. EPA recognizes the corrected provisions as part of the authorized program. The authorized provisions for which typographical and printing errors in the April 10, 2004 regulations have been corrected are noted below by inclusion in parentheses of July 15, 2005 after the regulatory citation.

(2) For a few regulations, the authorized regulation is an earlier version of the New York State regulation. For these regulations, EPA authorized the version of the regulations that appear in the Official Compilation of Code, Rules and Regulations dated January 31, 1992 or January 1, 1999. New York State made later changes to these regulations but these changes have not been authorized by EPA. The regulations where the authorized regulation is an earlier version of the regulation are noted below by inclusion in parentheses of January 31, 1992 or January 1, 1999 after the regulatory citations.

Part 370—Hazardous Waste Management System—General: Sections 370.1(a) (except (a)(3)); 370.1(b) through (d); 370.1(e) (except (e)(1)(xv), (e)(1)(xvi) and (e)(6)(ii) through (iii)); 370.2(a); 370.2(b)(1) through (b)(15) ''battery''; 370.2(b)(15) ''bedrock'' (January 31, 1992); 370.2(b)(17)–(b)(54); 370.2(b)(56) through (b)(71); 370.2(b)(72) (July 15, 2005); 370.2(b)(73) through (b)(91); 370.2(b)(94) through (b)(104); 370.2(b)(106) through (b)(122); 370.2(b)(123) and (124) (July 15, 2005); 370.2(b)(126) through (b)(187); 370.2(b)(188) (July 15, 2005); 370.2(b)(189) through (b)(212); 370(b)(214) and (b)(215);

370.2(b)(216) (except the last sentence); 370.2(b)(217) through (b)(220); 370.3 (except 370.3(c)); 370.4 (except 370.4(a)(1)(i) through (v)); 370.4(a)(1)(i) through (v) (July 15, 2005); 370.5 (except (b)).

Part 371—Identification and Listing of Hazardous Waste: Sections 371.1(a) through (c); 371.1(d) (except (d)(1)(ii)(e)); 371.1(e) (except 371.1(e)(2)(vi)('b')(21); 371.1(f)(1) through (7); 371.1(f)(8) (except the phrase ''or such mixing occurs at a facility regulated under Subpart 373–4 or permitted under Part 373 of this Title''); 371.1(f)(9) and (f)(10); 371.1(g)(1)(i); 371.1(g)(1)(ii) (except (g)(1)(ii)(c)); 371.1(g)(1)(iii) (except (g)(1)(iii)(a)); 371.1(g)(1)(iii)(a) (except the phrase ''as defined in section 372.5 of this Title, and provide a copy of'') (January 1, 1999); 371.1(g)(2) through (4); 371.1(h) through (j); 371.2; 371.3; and 371.4(a) and (b); 371.4(c) (except K171 and K172 entries); 371.4(c), K171 and K172 entries (July 15, 2005); 371.4(d), (f) and (i).

Part 372—Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities: Sections 372.1(a) through (d); 372.1(e)(2)(ii)(c) (January 31, 1992); 372.1(e)(2)(iii)(c) (January 31, 1992); 372.1(e)(3) through (e)(8); 372.1(g) and (h); 372.2 (except (a)(8)(vi)); 372.3 (except (a)(1), (a)(4), (a)(7)(i), (a)(8), (b)(1)(ii), (b)(5)(ii), (b)(6)(iv), (c)(4) and (d)(3)); 372.5 (except (h) and (i); 372.6; 372.7(a) and (b); 372.7(c) (except (c)(1)(ii)); and 372.7(d) (except (d)(4)); 372.7(d)(4) (January 31, 1992).

Part 373, Subpart 373–1—Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373–1.1(a) through (c), 373–1.1(d) (except (d)(1)(iii)(b), (d)(1)(iii)(c)(6), (d)(1)(iii)(d), (d)(1)(iv)(a) and (b), (d)(1)(x), (d)(1)(xvi) and (xviii)); 373–1.1(e); 373–1.1(h) and (i); 373–1.2; 373–1.3; 373–1.4(a); 373–1.4(g) and (h); 373–1.5(a)(1); 373–1.5(a)(2) (except (a)(2)(xviii)); 373–1.5(a)(3) and (4); 373–1.5(b) and (c); 373–1.5(d) (except (d)(3)); 373–1.5(e) through (p) (except reserved paragraphs); 373–1.6 (except (c)); 373–1.7 through 373–1.9; 373–1.10 (except (a)(1)); 373–1.10(a)(1) (January 1, 1999); and 373–1.11.

Part 373, Subpart 373–2—Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373–2.1 through 373–2.4; 373–2.5(a); 373–2.5(b) (except the last sentence in (b)(1)(i)(b) and the entire provision at (b)(1)(vii)); 373–2.5(c) through (g); 373–2.6 through 373–2.9; 373–2.10 (except last sentence in (g)(4)(i)); 373–2.11; 373–2.12 (except 373–2.12(a)(1), (d) and (g)(2)); 373–2.12(a)(1) (January 31, 1992); 373–2.12(g)(2) (January 31, 1992); 373–2.13; 373–2.14; 373–2.15 (except (a)(2)); 373–2.19; 373–2.23; 373–2.24; 373–2.27; 373–2.28; 373–2.29; 373–2.30; and 373–2.31.

Part 373, Subpart 373–3—Interim Status Standards Regulations for Owners and Operators of Hazardous Waste Facilities: Sections 373–3.1 (except 373–3.1(a)(4) and the phrase ''or Subpart 374–2 of this Title'' in 373–3.1(a)(6)); 373–3.2 through 373–3.4; 373–3.5 (except last sentence in 373–3.5(b)(1)(i)(b) and (b)(1)(vii)); 373–3.6 through 373–3.9; 373–3.10 (except last sentence in (g)(4)(i)); 373–3.11 through 373–3.14; 373–3.15 (except (a)(2)); 373–3.16 through 373–3.18; 373–3.23; and 373–3.27 through 373–3.31.

Part 374, Subpart 374–1—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities: Sections 374–1.1; 374–1.3; 374–1.6 (except (a)(2)(iii)); 374–1.7; 374–1.8(a)(1); 374–1.8(a)(2) (except the second sentence ''Such used oil * * * of this Title'' in (a)(2)(i)); 374–1.8(a)(3) through (a)(6); 374–1.8(b) through (m); and 374–1.13.

Part 374, Subpart 374–3—Standards for Universal Waste: Sections 374–3.1 (except (f) and (g)); 374–3.2; 374–3.3; 374–3.4 (except (a)(2)); 374–3.5; 374–3.6; and 374–3.7.

Part 376—Land Disposal Restrictions: Sections 376.1 (except (a)(5), (a)(9), (b)(1)(xi), (e) and (f)); 376.2; 376.3 (except (b)(4), (c) and (d)(2)); 376.4 (except (c)(2) and (e)(1) through (7)); and 376.5.

Appendices: Appendices 19 through 25; Appendices 27 through 30; Appendix 33; Appendix 38; Appendices 40 through 49 and Appendices 51 through 55.

Copies of the New York regulations that are incorporated by reference are available from West Group, 610 Opperman Drive, Eagan, MN 55123, ATTENTION: D3–10 (Phone #: 1–800–328–9352).

* * * * *

[FR Doc. E7–5361 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1540, 1570, and 1572

[Docket No. TSA–2006–24191; TSA Amendment Nos. 1515—(New), 1540–8, 1570–2, and 1572–7]

RIN 1652–AA41

Transportation Worker Identification Credential Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License; Correction

AGENCY: Transportation Security Administration (TSA).

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** on January 25, 2007 (72 FR 3492). That rule requires credentialed merchant mariners and workers with unescorted access to secure areas of vessels and facilities to undergo a security threat assessment and receive a biometric credential, known as a Transportation Worker Identification Credential (TWIC). This rule correction redesignates paragraphs in parts 1515 and 1572. In addition, this rule correction substitutes a word in parts 1540 and 1570 for consistency, deletes a word for clarity in part 1570 and inserts a word in part 1572 to clarify the type of fee. These revisions are necessary to correct typographical errors and to use terms consistently throughout the rule.

DATES: Effective March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Christine Beyer, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2657; facsimile (571) 227–1380; e-mail *Christine.Beyer@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2007, the Department of Homeland Security, through TSA and the U.S. Coast Guard (Coast Guard) published a final rule in the **Federal Register** (72 FR 3492) making technical changes to various provisions of chapter XII, title 49 (Transportation) of the Code of Federal Regulations (CFR), and implementing the TWIC program in the maritime sector of the nation's transportation system. The final rule enhances port security by requiring security threat assessments of individuals who have unescorted access to secure areas and improving access control measures to prevent unauthorized individuals from gaining unescorted access to secure areas. The final rule amends existing appeal and waiver procedures, and expands the provisions to apply to TWIC applicants and air cargo personnel.

This rule correction document redesignates paragraphs codified in parts 1515.5 and 1572.103, substitutes the word ''applicant'' for ''individual'' in parts 1540.201, 1540.203, 1540.205, and 1570.3, deletes a word for clarity in part 1570.3, and inserts the word ''fee'' in part 1572.401 for clarity.

Correction

■ In rule FR Doc. 07–19, published on January 25, 2007 (72 FR 3492), make the following corrections:

§ 1515.5 [Corrected]

■ 1. On page 3589, in the third column, redesignate paragraphs (h) and (i) as paragraphs (g) and (h) under § 1515.5 Appeal of Initial Determination of Threat Assessment based on criminal conviction, immigration status, or mental capacity.

§ 1540.201 [Corrected]

■ 2. On page 3592 in the second column, paragraph (a)(4) under § 1540.201 Applicability and terms used in this subpart, is corrected to read as follows:

§ 1540.201 Applicability and terms used in this subpart.

* * * * *

(a) * * *

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

* * * * *

§ 1540.203 [Corrected]

■ 3. On page 3592 in the third column, paragraph (b)(2)(ii) under § 1540.203 Operator responsibilities, is corrected to read as follows:

§ 1540.203 Operator responsibilities.

* * * * *

(b) * * *

(2) * * *

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

* * * * *

§ 1540.205 [Corrected]

■ 4. On page 3593 in the first and second columns, paragraph (d), as correctly designated at 72 FR 5633, February 7, 2007, under § 1540.205 Procedures for security threat assessment, is corrected to read as follows:

§ 1540.205 Procedures for security threat assessment.

* * * * *

(d) *Withdrawal by TSA.* TSA serves a Withdrawal of the Initial Determination of Threat Assessment on the applicant and a Determination of No Security Threat on the operator, if the appeal results in a determination that the applicant does not pose a security threat.

§ 1570.3 [Corrected]

■ 5. On page 3594 in the first column under § 1570.3 Terms used in this subchapter, the definition of ''Initial Determination of Threat Assessment'' is corrected to read as follows:

§ 1570.3 Terms used in this subchapter.

* * * * *

Initial Determination of Threat Assessment means an initial administrative determination by TSA that an applicant poses a security threat warranting denial of an HME or a TWIC.

* * * * *

§ 1572.103 [Corrected]

■ 6. On page 3600 through 3601, in the third and first columns respectively, redesignate the second paragraph (b)(2)(xi), paragraph (b)(2)(xii), paragraph (b)(2)(xii), and paragraph (b)(2)(xiv), as paragraphs (b)(2)(xii) through (xv) respectively, under § 1572.103 Disqualifying criminal offenses.

§ 1572.401 [Corrected]

■ 7. On page 3603 in the first column, paragraph (a) under § 1572.401 Fee collection options, is corrected to read as follows:

§ 1572.401 Fee collection options.

(a) *State collection and transmission.* If a State collects fingerprints and applicant information under 49 CFR part 1572, the State must collect and transmit to TSA the Threat Assessment Fee, in accordance with the requirements of 49 CFR 1572.403. The State also must collect and remit the FBI fee, in accordance with established procedures.

* * * * *

Issued in Arlington, Virginia, on March 21, 2007.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations, Transportation Security Administration.

[FR Doc. E7–5487 Filed 3–23–07; 8:45 am]

BILLING CODE 9110–05–P

Proposed Rules

Federal Register
Vol. 72, No. 57
Monday, March 26, 2007

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038-AC28

Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission hereby proposes amendments to the Acceptable Practices [1] for section 5(d)(15) (''Core Principle 15'') of the Commodity Exchange Act (''CEA'' or ''Act'').[2] The amendments clarify the definition of ''public director'' contained in the Acceptable Practices.[3] The Commission believes that the proposed amendments will remove potential ambiguities and correct a technical drafting error. The amendments are consistent with the Acceptable Practices' intent to ensure the inclusion of truly public directors on designated contract market (''DCM'') boards of directors and Regulatory Oversight Committees (''ROCs''), as well as truly public persons on their disciplinary panels. The Commission welcomes comment on the proposed amendments.

DATES: Comments should be submitted on or before April 25, 2007.

ADDRESSES: Comments should be sent to Eileen A. Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Comments may be submitted via e-mail at *secretary@cftc.gov.* ''Regulatory Governance'' must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. Comments may also be submitted at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Acting Deputy Director for Market Compliance, (202) 418–5429; or Sebastian Pujol Schott, Special Counsel, (202) 418–5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 2007, the Commission published final Acceptable Practices for Core Principle 15 of the Act.[4] The published Acceptable Practices are the first for Core Principle 15 and are applicable to all DCMs.[5] They pertain to minimizing conflicts of interest in decision making by DCMs, and offer all DCMs a ''safe harbor'' by which they may minimize such conflicts and thereby comply with Core Principle 15. To receive safe harbor treatment, DCMs must implement the Acceptable Practices' various operational provisions in their entirety, including instituting boards of directors that are composed of at least 35% public directors and establishing oversight of all regulatory functions through ROCs consisting exclusively of public directors.[6] In addition to these operational provisions, the Acceptable Practices also set forth a public director definition. The proposed amendments consist exclusively of revisions to that definition.

II. Need for Clarifying Amendments

The Commission proposes to amend two subsections of the Acceptable Practices, Subsections (b)(2)(ii)(B) and (b)(2)(ii)(C), which together with Subsections (b)(2)(i), (b)(2)(ii)(A) and (b)(2)(ii)(D), establish the definition of a DCM public director.[7] In general, the amendments address ambiguities that may arise from those provisions' different uses of the terms ''affiliate'' and ''affiliated.'' Such uses include references to corporate affiliation; personal affiliation; affiliation with a DCM member; and affiliation with a firm. The amendments also correct a technical drafting error and define ''payments.'' The proposed amendments are consistent with the intent of both the proposed and final Acceptable Practices, and should not be interpreted as a diminution in the level of independence that those criteria are intended to ensure for public directors. In light of the nature of these amendments, the Commission does not anticipate that it will be necessary to extend the comment period.

III. Description of Clarifying Amendments

A. Subsection (b)(2)(ii)(B)

Subsection (b)(2)(ii)(B) precludes DCM members, employees of members, and persons ''affiliated'' with members from service as public directors. As adopted, the Acceptable Practices define ''affiliated with a member'' as being an officer or director of a member, or having ''any other relationship with the member such that his or her impartiality could be called into question in matters concerning the member.'' This impartiality provision reflects a qualitative test intended to capture specific disqualifying relationships between individuals and DCM members.

The Commission proposes to amend the definition of ''affiliated'' in Subsection (b)(2)(ii)(B) by removing any reference to the qualitative ''impartiality'' test outlined above. This eliminates the qualitative test and replaces it with an exact articulation of the relationships that are prohibited under Subsection (b)(2)(ii)(B).

[1] The acceptable practices for core principles reside in Appendix B to Part 38 of the Commission's Regulations, 17 CFR Part 38, App. B.

[2] The Act is codified at 7 U.S.C. 1 *et seq.* (2000).

[3] Those Acceptable Practices were adopted by the Commission on January 31, 2007, 72 FR 6936 (February 14, 2007), after having been originally proposed by the Commission on June 28, 2006, 71 FR 38740 (July 7, 2006).

[4] Core Principle 15 states: ''CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.'' CEA § 5(d)(15), 7 U.S.C. 7(d)(15).

[5] Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 15(A)(a) of the Securities Exchange Act of 1934, or is an alternative trading system, and that operates as a DCM in security futures products under Section 5f of the Act and Commission Regulation 41.31, is exempt from the core principles enumerated in Section 5 of the Act and the acceptable practices thereunder.

[6] The Acceptable Practices became effective on March 16, 2007. Existing DCMs were given two years, measured from the effective date, to achieve full compliance with Core Principle 15.

[7] Other than Subsections (b)(2)(ii)(B) and (b)(2)(ii)(C), the Commission is not proposing changes to any other provision of the Acceptable Practices for Core Principle 15.

Specifically, the amendment states that a person is ''affiliated'' with a DCM member, and thus disqualified as a public director, if he or she is an ''officer, director, or partner of the member.''

B. Subsection (b)(2)(ii)(C)

Subsection (b)(2)(ii)(C) creates a bright-line, $100,000 combined annual payments test for potential public directors and the firms with which they are affiliated (''payment recipients''). A particular payment's relevance to the $100,000 bright-line test depends upon the source (''payment provider'') and nature of the payment. The Commission proposes to amend this subsection to define ''payment;'' clarify the term ''affiliate,'' as used in the subsection; remove the term ''affiliated'' in referring to certain relationships and replace it with the specific payment providers and recipients that the Commission intends to reach; and correct a technical drafting error.

The first amendment defines the nature of ''payment,'' limiting it to compensation for professional services rendered. The amendment reflects the Commission's intent to capture those persons and firms providing professional services to a DCM and/or its members, as well as the employees, officers, directors, and partners of such firms.

The second amendment to Subsection (b)(2)(ii)(C) clarifies the clause ''any affiliate of the contract market.'' Clarification is provided via explicit cross-reference to Subsection (b)(2)(ii)(A), which defines the affiliates of a contract market to include the parents or subsidiaries of the contract market or entities that share a common parent with the contract market. This proposed amendment is consistent with the Commission's original intent.

Two other amendments to Subsection (b)(2)(ii)(C) address payment providers and recipients, resolving potential ambiguities arising from multiple uses of the term ''affiliated.'' In addition, one of the amendments corrects a drafting error in this subsection which resulted from the inadvertent inclusion of ''entity'' in the clause ''any person or entity affiliated with a member of the contract market'' (''member payment-providers provision''). The inclusion of ''entity'' in the member payment-providers provision resulted in a standard that encompassed a range of payment providers broader than the Commission intended. The Commission proposes to remedy its error by deleting ''entity.''

With respect to ''affiliated,'' the Commission notes that the term is not defined in the member payment-providers provision. Potential ambiguity could arise in importing and applying a definition from elsewhere in the Acceptable Practices. Accordingly, the Commission proposes to amend and clarify the member payment-providers provision by replacing the term ''affiliated'' with a precise articulation of the member payment providers it intends to reach. Consistent with the proposed Acceptable Practices, the Commission proposes to amend the adopted member payment-providers provision so that it refers to payments ''from a member or an officer or director of a member* * *.''

Similarly, the Commission has determined to specifically define the payment recipients that it intends to reach. In the adopted Acceptable Practices, the relevant recipients include ''a firm with which the director is affiliated, as defined above,'' implying a cross-reference to Subsection (b)(2)(ii)(B). Furthermore, through this cross-reference, the payment recipients provision incorporates the qualitative impartiality test embedded within the adopted Subsection (b)(2)(ii)(B).[8]

As previously noted, the Commission has determined that the qualitative impartiality test in Subsection (b)(2)(ii)(B) is best replaced with a specific articulation of the relevant relationships. Similarly, the Commission believes that a specific articulation is appropriate with respect to payment recipients in Subsection (b)(2)(ii)(C), both to remove any ambiguities which may exist and to eliminate the cross-reference upon which the payment recipients provision currently relies. Accordingly, the Commission proposes to amend Subsection (b)(2)(ii)(C) to reach payments made to the director and payments made to firms ''of which the director is an employee, officer, director, or partner.''

Finally, as adopted, the last sentence in Subsection (b)(2)(ii)(C) states, in part, that ''compensation for services as a director does not count toward the $100,000 payment limit.'' This provision was intended to avoid the dilemma of DCM public directors forfeiting their public director eligibility because of compensation received for serving in such capacity. The Commission notes, however, that proposed changes elsewhere in this Subsection contain new references to various types of directors and that those changes may create uncertainty as to the meaning of ''director'' in this context. Accordingly, the Commission proposes to insert ''of the contract market'' after ''director,'' making clear that compensation for services as a director of the contract market does not count toward the $100,000 payment cap.

[8] Discussed in Section III(A) of this preamble.

IV. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the CEA.[9] By its terms, Section 15(a) requires the Commission to ''consider the costs and benefits'' of a subject rule or order without requiring the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Section 15(a) requires that the costs and benefits of proposed rules be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.[10]

On February 14, 2007, the Commission published final Acceptable Practices for Core Principle 15 that included prophylactic measures designed to minimize conflicts of interest in a DCM's decision making process.[11] The final rulemaking thoroughly considered the costs and benefits of the Acceptable Practices and responded to comments relating to the costs of adhering to their requirements.

The amendments herein to the adopted Acceptable Practices are proposed to enhance regulatory certainty by addressing potential definitional ambiguities and a drafting error. The removal of such ambiguities will facilitate the inclusion of public directors on DCM governing boards and committees and ensure that DCMs are able to comply with the requirements of the Acceptable Practices. In turn,

[9] 7 U.S.C. 19(a).

[10] *E.g, Fishermen's Dock Co-op., Inc.* v. *Brown.* 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck*, 751 F.2d 1336 (D.C. Cir. 1985)(agency has discretion to weigh factors in undertaking costs-benefits analyses).

[11] 72 FR 6936 (February 14, 2007).

compliance with the Acceptable Practices will assure DCMs of their compliance with the requirements of Core Principle 15 as they pertain to conflicts of interest in self-regulation and self-regulatory organizations. The amendments should not impose additional costs, but in fact may reduce costs of compliance in light of the removal of ambiguities. They assure that what is intended to be a bright-line test operates as such. After considering the above mentioned factors and issues, the Commission has determined to propose these amendments to the Acceptable Practices of Core Principle 15. The Commission specifically invites public comment on its application of the criteria contained in Section 15(a) of the Act and furthermore invites interested parties to submit any quantifiable data that they may have concerning the costs and benefits of the proposed amendments to the Acceptable Practices of Core Principle 15.

B. Paperwork Reduction Act of 1995

These proposed amendments to the Acceptable Practices of Core Principle 15 would not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply. We solicit comment on the accuracy of our estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the amendments proposed herein.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The proposed amendments to the Acceptable Practices for Core Principle 15 affect DCMs. The Commission has previously determined that DCMs are not small entities for purposes of the Regulatory Flexibility Act.[12] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed amendments to the Acceptable Practices will not have a significant economic impact on a substantial number of small entities.

[12] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

V. Text of Proposed Amendments to Acceptable Practices for Core Principle 15

List of Subjects in 17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

In light of the foregoing, and pursuant to the authority in the Act, and in particular, Sections 3, 5, 5c(a) and 8a(5) of the Act, the Commission hereby proposes to amend Part 38 of Title 17 of the Code of Federal Regulations as follows:

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2, and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. In Appendix B to Part 38 amend paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C) of the Acceptable Practices for Core Principle 15 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles

* * * * *

Core Principle 15 of section 5(d) of the Act: CONFLICTS OF INTEREST

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) The director is a member of the contract market, or a person employed by or affiliated with a member. ''Member'' is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q). In this context, a person is ''affiliated'' with a member if he or she is an officer, director, or partner of the member;

(C) The director, or a firm of which the director is an employee, officer, director or partner, receives more than $100,000 in combined annual payments from the contract market, any affiliate of the contract market, as defined in Subsection (2)(ii)(A), or from a member or an officer or director of a member of the contract market. As used in this Subsection (2)(ii)(C), ''payments'' means compensation for professional services. Compensation for services as a director of the contract market does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

* * * * *

Issued in Washington, DC, on March 20, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. E7–5468 Filed 3–23–07; 8:45 am]

BILLING CODE 6351–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2006–0103]

RIN 0960–AF99

Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our regulations to codify two provisions of the Balanced Budget Act of 1997 that affect the payment of benefits under title XVI of the Social Security Act (the Act). One of the provisions extended temporary institutionalization benefits to children receiving SSI benefits who enter private medical treatment facilities and who otherwise would be ineligible for temporary institutionalization benefits because of private insurance coverage. The other provision replaced obsolete terminology in the Act that referred to particular kinds of medical facilities and substituted a broader, more descriptive term.

DATES: To be sure that we consider your comments, we must receive them by May 25, 2007.

ADDRESSES: You may give us your comments: by Internet through the Federal eRulemaking Portal at *http://www.regulations.gov*; by e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

FOR FURTHER INFORMATION CONTACT: Curt Dobbs, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7963 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:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The basic purpose of the SSI program is to ensure a minimum level of income to individuals who are age 65 or older, or blind or disabled, and who have limited income and resources. The Balanced Budget Act of 1997 (Public Law 105–33), enacted August 5, 1997, contained two provisions that affected the payment of SSI benefits to certain SSI beneficiaries who are institutionalized. One of the provisions extended temporary institutionalization benefits to children who enter private medical treatment facilities and who otherwise would be subject to a reduced benefit because of private insurance coverage. The other provision removed obsolete terminology in the Act that referred to particular categories of inpatient medical facilities and substituted the broader, more descriptive term ''medical treatment facility.'' This change in terminology permits us to correct an unintended inequity in the amount of SSI benefits that were payable to certain children under the obsolete terminology.

Extending Temporary Institutionalization Benefits to Children Under Age 18 in Private Institutions

Residents of public institutions generally are ineligible to receive SSI payments. However, there are some exceptions to this general rule. One exception in section 1611(e)(1)(B) of the Act provides that residents of medical treatment facilities (which we are proposing to define as a facility licensed or otherwise approved by a Federal, State, or local government to provide inpatient medical care and services) may be eligible for SSI if Medicaid pays a substantial part (more than 50 percent) of the cost of the beneficiary's care. In such cases, SSI payments to the resident of the medical treatment facility are limited to a maximum of $30 a month.

Another exception in section 1611(e)(1)(G) of the Act allows payment of full SSI benefits for up to 3 full months after entering a public facility if a physician certifies that the recipient's stay in the facility is likely not to exceed 3 months and we determine the recipient needs to continue to maintain and provide for the expenses of the home to which he or she may return. These benefits are referred to as ''temporary institutionalization benefits.''

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193), enacted August 22, 1996, amended section 1611(e)(1)(B) of the Act to allow children under age 18 who are in medical treatment facilities and who have private health insurance to receive the reduced SSI payment ($30). However, Public Law 104–193 did not amend the statutory provision on temporary institutionalization to extend such benefits to children with private health insurance. Consequently, children who were temporarily in private medical facilities could not be eligible for 3 months of full benefits if private health insurance, or a combination of Medicaid and private health insurance, paid more than 50 percent of the cost of their care. Payments to these children were limited to the reduced benefit amount of no more than $30 a month beginning with their first full month of institutionalization.

Section 5522(c) of Public Law 105–33 revised section 1611(e)(1)(G) of the Act to correct this omission. Prior to this revision, section (e)(1)(G) specified that the recipient must be an inmate of either a public institution whose primary purpose is to provide medical or psychiatric care, or a hospital, extended care facility, nursing home, or intermediate care facility that receives payments under a State plan approved under title XIX. As a result of Public Law 105–33, and subject to SSI eligibility and benefit computation rules, those children in private medical facilities for whom private health insurance, or a combination of Medicaid and private health insurance was paying more than 50 percent of the cost of care, now can be eligible for continuation of their full SSI benefits for up to 3 months under section 1611(e)(1)(G) of the Act. For example, when a child who is receiving SSI while living at home goes into a medical treatment facility, and private insurance through the parent's employment pays for more than 50 percent of the cost of care, the child can continue to receive SSI benefits during a temporary institutionalization of up to 3 months. Providing SSI benefits during a temporary period of institutionalization is a provision designed to enable SSI beneficiaries (adult or child) to provide for the expenses of the home where they live and to reduce the risk of losing their place of residence due to a sudden loss of SSI benefits during a temporary period of institutionalization.

Revised Terminology for Inpatient Providers

Section 5522(c) of Public Law 105–33 also replaced outdated terminology in section 1611(e)(1)(B) of the Act. Prior to this statutory change, section 1611(e)(1)(B) specified certain categories of inpatient providers used in the Medicaid program. In the early years of the SSI program, the terminology ''hospital, extended care facility, nursing home, or intermediate care facility'' provided a comprehensive list of all possible inpatient settings as defined by the Medicaid program. However, as Medicaid dropped or renamed some of those coverage categories and added new categories, the list in section 1611(e)(1)(B) became obsolete and was no longer used. As a result, prior to Public Law 105–33, children in certain kinds of inpatient facilities were subject to the reduced benefit amount of no more than $30, while children in other kinds of Medicaid covered inpatient facilities could receive the full SSI benefit. For example, Medicaid created the new coverage category of Psychiatric Residential Treatment Facility (PRTF) for individuals under age 21. PRTFs can receive substantial Medicaid payments, including the room and board payment. Before Public Law 105–33 made this technical amendment, children residing in a PRTF received full SSI benefits because that kind of facility was not listed in section 1611(e)(1)(B) as a facility whose residents would be subject to the $30 payment limit. For many PRTF residents, Medicaid was paying all of their expenses, and yet Public Law 104–193 required payment of the full SSI benefit rate. This situation created an inequity between those children and children in other kinds of Medicaid covered inpatient facilities. This change in terminology now allows for similarly situated children (i.e., children residing in medical treatment facilities where Medicaid is providing for more than 50 percent of the cost of their care) to be paid the same amount of SSI benefits.

Explanation of Proposed Changes

We propose to make the following changes to our rules to codify provisions of Public Law 105–33 that affect the payment of benefits under title XVI of the Act to individuals who are in institutions:

- We propose to revise § 416.212(b)(1) by adding ''or private'' to the introductory text to reflect the provision that gives full temporary institutionalization benefits to children who enter private medical treatment

facilities when Medicaid pays more than 50 percent of the cost of their care.

• We propose to revise §§ 416.201 and 416.414(c) to remove the definition for ''medical care facility'' and replace it with a new definition for ''medical treatment facility.''

• We propose to amend §§ 416.201, 416.211(b) and (c)(5)(iv), 416.414(a), (b)(2) and (3)(i)–(ii), 416.571, 416.1149(a)(1) and (c)(1)(i)–(ii), 416.1165(g)(6) and (i)(1), 416.1167(a)(2), and 416.1202(b)(2)(i) by eliminating the obsolete terms ''medical facility'' and ''medical care facility'' and replacing them with the term ''medical treatment facility.''

• We propose to amend § 416.708(k) by eliminating the terms ''hospital'', ''skilled nursing facility'', and ''intermediate care facility'' and replacing them with the term ''medical treatment facility.''

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to comments you may have on these proposed rules, we also invite your comments on how to make these rules easier to understand. For example:

• Have we organized the material to suit your needs?

• Are the requirements in the rules clearly stated?

• Do the rules contain technical language or jargon that is unclear?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

• Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

In order to codify two provisions of the Balanced Budget Act of 1997, we are proposing to revise our regulations that affect the payment of benefits under title XVI of the Act. One of the provisions extended temporary institutionalization benefits to children who enter private medical treatment facilities and who otherwise would be subject to a reduced benefit because of private insurance coverage. The other provision replaced obsolete terminology in the Act that referred to particular kinds of medical facilities and substituted a broader, more descriptive term.

As a result, we are amending the terminology in § 416.708 (k) by eliminating the terms ''hospital'', ''skilled nursing facility'', and ''intermediate care facility'' and replacing them with the term ''medical treatment facility.'' As outlined below this section contains specific public reporting requirements that require clearance under the Paperwork Reduction Act of 1995. Respondents to this collection are SSI recipients who are admitted to, or discharged from, a medical treatment facility or other public or private institution.

Title/section & collection description	Annual number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
What you must report 416.708(k) Admission to or discharge from: (1) A medical treatment facility, (2) A public institution, or (3) A private institution.	34,200	1	7	3,990

An Information Collection Request has been submitted to OMB for clearance.

We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be sent to OMB by fax or by email to: Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax Number:* 202–395–6974, *Email address:* *OIRA_Submission@omb.eop.gov*.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. This does not affect the deadline for the public to comment to SSA on the proposed regulations. These information collection requirements will not become effective until approved by OMB. When OMB has approved these information collection requirements, SSA will publish a notice in the **Federal Register**.

To receive a copy of the OMB clearance package, your staff may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: December 13, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts B, D, E, G, K, and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat.

268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.201 is amended by removing the definition of ''Medical care facility'' and adding a definition of ''Medical treatment facility'' in alphabetical order to read as follows:

§ 416.201 General definitions and terms used in this subpart.

* * * * *

Medical treatment facility means an institution or that part of an institution that is licensed or otherwise approved by a Federal, State, or local government to provide inpatient medical care and services.

* * * * *

§§ 416.201 and 416.211 [Amended]

3. In 20 CFR part 416, subpart B, remove the words ''medical facility'' and ''medical care facility'' each time they appear and add in their place the words ''medical treatment facility'' in the following places:

a. Section 416.201 in the definitions of ''Medical care facility'' and ''Public emergency shelter for the homeless''; and

b. Section 416.211(b) and (c)(5)(iv).

4. Section 416.212 is amended by revising the introductory text in paragraph (b)(1) to read as follows:

§ 416.212 Continuation of full benefits in certain cases of medical confinement.

* * * * *

(b) * * *

(1) Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(G) of the Social Security Act for up to 3 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays a substantial part (more than 50 percent) of the cost of your care or, if you are a child under age 18, reduced because of residence in a public or private institution which receives payments under a health insurance policy issued by a private provider, or a combination of Medicaid and a health insurance policy issued by a private provider, pay a substantial part (more than 50 percent) of the cost of your care if—

* * * * *

Subpart D—[Amended]

5. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

6. Section 416.414 is amended by revising the section heading and paragraph (c) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical treatment facility.

* * * * *

(c) *Definition.* For purposes of this section, a *medical treatment facility* means an institution or that part of an institution that is licensed or otherwise approved by a Federal, State, or local government to provide inpatient medical care and services.

§ 416.414 [Amended]

7. In addition to the amendment set forth above, in 20 CFR part 416, subpart D, remove the words ''medical facility'' and ''medical care facility'' and add in their place the words ''medical treatment facility'' in § 416.414(a), (b)(2), and (b)(3)(i) through (ii).

Subpart E—[Amended]

8. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

§ 416.571 [Amended]

9. In 20 CFR part 416, subpart E, remove the words ''medical facility'' wherever they appear and add in their place the words ''medical treatment facility'' in § 416.571.

Subpart G—[Amended]

10. The authority citation for subpart G of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

11. Section 416.708 is amended by revising paragraph (k) to read as follows:

§ 416.708 What you must report.

* * * * *

(k) *Admission to or discharge from a medical treatment facility, public institution, or private institution.* You must report to us your admission to or discharge from—

(1) A medical treatment facility; or

(2) A public institution (defined in § 416.201); or

(3) A private institution. *Private institution* means an institution as defined in § 416.201 which is not administered by or the responsibility of a governmental unit.

* * * * *

Subpart K—[Amended]

12. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383 and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

§§ 416.1149, 416.1165 and 416.1167 [Amended]

13. In 20 CFR part 416, subpart K, remove the words ''medical facility'' and ''medical care facility'' and add in their place the words ''medical treatment facility'' in the following places:

a. Section 416.1149(a)(1) and (c)(1)(i) through (ii);

b. Section 416.1165(g)(6) and (i)(1); and

c. Section 416.1167(a)(2).

Subpart L—[Amended]

14. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631 and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383 and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

§ 416.1202 [Amended]

15. In 20 CFR part 416, subpart L, remove the words ''medical facility'' and ''medical care facility'' and add in their place the words ''medical treatment facility'' in § 416.1202(b)(2)(i).

[FR Doc. E7–5134 Filed 3–23–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AM49

Supplemental Statement of the Case

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations regarding the time limit for filing a response to a Supplemental Statement of the Case in appeals to the Board of Veterans' Appeals (Board). We propose to change the response period

from 60 days to 30 days. The purpose of this change is to improve efficiency in the appeals process and reduce the time that it takes to resolve appeals while still providing appellants with a reasonable period to respond to a Supplemental Statement of the Case.

DATES: Comments must be received by VA on or before May 25, 2007.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, 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–AM49—Supplemental Statement of the Case.'' Copies of 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 may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board is an administrative body within VA that decides appeals from denials by Agencies of Original Jurisdiction (AOJs) of claims for veterans' benefits, as well as occasional cases of original jurisdiction. The Board is under the administrative control and supervision of a Chairman who is directly responsible to the Secretary of Veterans Affairs. 38 U.S.C. 7101(a). The Board's Appeals Regulations and Rules of Practice are found at 38 CFR parts 19 and 20.

An appeal to the Board is initiated by a timely filed Notice of Disagreement and completed (also called ''perfected'') by a timely filed Substantive Appeal after a Statement of the Case is furnished. 38 U.S.C. 7105(a); 38 CFR 20.200. Under applicable law, the AOJ provides notice of any decision made by VA affecting the payment of benefits or the granting of relief. 38 U.S.C. 5104; 38 CFR 3.103(b)(1). The claimant has one year from the date of mailing that notice to file a Notice of Disagreement. 38 U.S.C. 7105(b)(1); 38 CFR 20.302(a). Following receipt of a timely Notice of Disagreement, the AOJ will prepare a Statement of the Case, which must include: (1) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed; (2) a citation to pertinent laws and regulations and a discussion of how such laws and regulations affected the AOJ's decision; and (3) the AOJ decision on each issue and a summary of the reasons for such decision. 38 U.S.C. 7105(d)(1); 38 CFR 19.29. Except in cases of simultaneously contested claims, the claimant has 60 days to file a Substantive Appeal in response to the Statement of the Case or the remainder of the one-year period from the date of notice of the decision being appealed, whichever period ends later. 38 U.S.C. 7105(d)(3); 38 CFR 20.302(b)(1). In simultaneously contested claims, a Substantive Appeal and any response to a Supplemental Statement of the Case must be filed within 30 days from the date of mailing of the Statement of the Case and Supplemental Statement of the Case, respectively. 38 U.S.C. 7105, 7105A(b); 38 CFR 20.501(b) and (c).

Often, the AOJ receives additional evidence in support of the appeal after the Statement of the Case was issued but before the appeal is certified for appellate review and transferred to the Board. If the additional evidence is new (i.e., not duplicative of evidence previously of record that was discussed in the Statement of the Case or a prior Supplemental Statement of the Case) and relevant to the appeal, the AOJ will prepare a document known as a Supplemental Statement of the Case and furnish a copy to the appellant and his or her representative, if any. 38 CFR 19.31(b)(1), 19.37(a). The purpose of a Supplemental Statement of the Case is to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. 38 CFR 19.31(a).

A Supplemental Statement of the Case will also be furnished if the AOJ discovers a material defect in the Statement of the Case or a prior Supplemental Statement of the Case, or determines that for any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate. 38 CFR 19.31(b). Additionally, if an appeal is remanded by the Board to the AOJ and a claim cannot be granted on remand, a Supplemental Statement of the Case is generally provided to the appellant regarding that issue. 38 CFR 19.31(c), 19.38. Thereafter, the case is returned to the Board.

Currently, 38 CFR 19.38, 20.302(c), and 20.303 provide information regarding the Supplemental Statement of the Case. These regulations indicate that appellants are allowed a period of 60 days from the date of mailing of the Supplemental Statement of the Case to submit a response. Moreover, under 38 CFR 20.303, an extension of the 60-day period for responding to the Supplemental Statement of the Case, when such a response is required, may be granted for good cause. We propose to change the 60-day period in each of these regulations to 30 days, to help expedite the appeals process while still providing appellants with a reasonable period to respond. We believe that the beneficial effects of the amendment will significantly outweigh any potential adverse effects on appellants and we are soliciting comments on this point.

Unlike the Statement of the Case, which must contain specific information about the evidence and issues in the case, the applicable laws and regulations, and the reasons for each determination, a Supplemental Statement of the Case is not required to contain the same degree of detail. As its name implies, a Supplemental Statement of the Case is a supplement to the Statement of the Case. The document is intended to inform the appellant of any material changes to, or additions to, the information included in the Statement of the Case. 38 CFR 19.31(a). In no case will a Supplemental Statement of the Case be used to announce AOJ decisions on issues that were not previously addressed in a Statement of the Case. 38 CFR 19.31(a). Therefore, due to the limited purpose of a Supplemental Statement of the Case, less time should be needed to respond to a Supplemental Statement of the Case as compared to the Statement of the Case. In addition, under this proposed rule change, an extension of the 30-day period for responding to a Supplemental Statement of the Case may still be granted for good cause. 38 CFR 20.303.

Significantly, provided that a Substantive Appeal has been timely filed in accordance with 38 CFR 20.302(b), a response to a Supplemental Statement of the Case is strictly optional and is not required to perfect an appeal. 38 CFR 20.302(c). If there is no response to the Supplemental Statement of the Case within the allowed period, any remaining processing of the case can be completed and the appeal can be certified and transferred to the Board. In practice, VA adjudicators will hold the case for the full response period to allow the appellant every opportunity to respond to the Supplemental Statement of the Case. By reducing the response

period from 60 days to 30 days, VA can allow the case to move forward faster than under current regulations, thus helping expedite the adjudication of appealed cases. In addition to the 30-day period to respond to the Supplemental Statement of the Case, once his or her appeal has been certified and transferred to the Board, the appellant typically still has 90 days to submit further evidence. 38 CFR 20.1304(a). Although 38 CFR 20.1304(a) states that the appellant has 90 days or until the Board promulgates a decision to submit evidence, as a practical matter, with the exception of a limited class of cases, such as cases that were advanced on the Board's docket pursuant to 38 U.S.C. 7107(a), the Board generally does not decide cases until after the 90-day period has passed. This effectively provides most appellants with the full 90 days to submit additional evidence. Moreover, under § 20.1304(b), even after the 90-day period expires an appellant may still move to submit additional evidence if he or she can demonstrate good cause for the delayed submission.

This proposed rule would not affect the statutorily provided 60-day period to respond to a Statement of the Case. Rather, this proposed rule change is confined to the Supplemental Statement of the Case, which is a document created solely by VA regulation to describe VA's AOJ activity when, most commonly, after a Statement of the Case was issued but before the appeal is certified and transferred to the Board, non-duplicative evidence is received that is relevant to the issue or issues on appeal, or when the AOJ plans to return a case to the Board following a Board remand for further development.

For the reasons stated above, we propose to change the 60 day period to respond to a Supplemental Statement of the Case to 30 days in 38 CFR 19.38, 20.302(c), and 20.303.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would 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. By reducing the period allowed for submitting an optional response to a Supplemental Statement of the Case to 30 days, this proposed rule would affect claimants for VA benefits who appeal to the Board. It may also affect a few small organizations appealing to the Board, including attorneys appealing the cancellation of their accreditation by the VA General Counsel and accredited attorneys appealing decisions affecting payment of their fees out of past-due benefits awarded to VA claimants. This proposed rule may also affect a few small governmental jurisdictions appealing to the Board, such as state agencies appealing VA decisions on per diem payments for services provided to veterans in state homes.

However, reducing the period permitted for submitting an optional response to a Supplemental Statement of the Case would not have a significant economic impact on a substantial number of these small entities. Rather, it would expedite the processing of their appeals to the Board. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of 5 U.S.C. 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.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be 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 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 one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal 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 Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: November 30, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 19 and 20 as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

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

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.38 [Amended]

2. Section 19.38 is amended by removing ''60-day'' and adding, in its place, ''30-day''.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart D—Filing

§ 20.302 [Amended]

4. Section 20.302(c) is amended by removing ''60'' and adding, in its place, ''30''.

§ 20.303 [Amended]

5. Section 20.303 is amended by removing ''or the 60-day period for responding to a Supplemental Statement of the Case'' and adding, in its place, ''or the 30-day period for responding to a Supplemental Statement of the Case''.

[FR Doc. E7–5435 Filed 3–23–07; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R02–RCRA–2006–0518; FRL–8278–1

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to revise the codification of New York's authorized hazardous waste program which is set forth in the regulations entitled ''Approved State Hazardous Waste Management Programs'', New York's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will enforce under the Solid Waste Disposal Act, as amended and commonly referred to as the Resource Conservative and Recovery Act (RCRA). In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date indicated, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Comments must be received on or before April 25, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–RCRA–2006–0518, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: infurna.michael@epa.gov.*
- *Fax:* (212) 637–3056.
- *Mail:* Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.
- *Hand Delivery or Courier:* Deliver your comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R02–RCRA–2006–0518. EPA's policy is that all comments received will be included in the public docket without change, 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 Federal *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 or any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*). Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available on in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy. You can inspect the records related to this codification effort in the EPA Region 2 Library by appointment only. To make an appointment please call (212) 637–3185.

FOR FURTHER INFORMATION CONTACT: Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd floor, New York, NY 10007; telephone number (212) 637–4177; fax number: (212) 637–437; e-mail address: *infurna.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information please see the immediate final rule published in the

''Rules and Regulations'' section of this **Federal Register**.

Dated: January 4, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. 07–1454 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 07–1337]

Missoula Intercarrier Compensation Reform Plan Federal Benchmark Mechanism Proposal

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a proposed federal benchmark mechanism addressing issues faced by ''early adopter'' states, i.e. states that have already taken steps to substantially reduce intrastate access rates. This proposal is intended to be incorporated as an amendment to the Missoula Plan, an intercarrier compensation reform plan filed July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation (the NARUC Task Force).

DATES: Comments due on or before March 28, 2007, reply comments due on or before April 12, 2007.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC. Comments may be submitted, identified by CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.fcc.gov*. Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) / *http://www.fcc.gov/cgb/ecfs/*.
- *E-mail:* To *randy.clarke@fcc.gov*. Include CC Docket No. 01–92 in the subject line of the message.
- *Fax:* To the attention of Randy Clarke at 202–418–1567. Include CC Docket No. 01–92 on the cover page.
- *Mail:* Parties should send a copy of their filings to Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A360, 445 12th Street, SW., Washington, DC 20554.
- *Public inspection, purchase, or download:* The full text of the document summarized here is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 225 12th Street, SW., Room CY–A257, Washington, DC 20504. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, and may also be downloaded at: *http://www.fcc.gov*.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or Randy Clarke, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1587.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in, CC Docket No. 01–92, DA No. 07–1337, released March 16, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. By this document, the Commission establishes comment and reply comment filing dates for receiving comment on a proposed federal benchmark mechanism addressing issues faced by ''early adopter'' states, i.e. states that have already taken steps to substantially reduce intrastate access rates. The filing dates established replace filing dates previously established in Public Notice DA 03–738, released by the Commission on February 16, 2007. The proposal on which the Commission seeks comment is intended to be incorporated as an amendment to the Missoula Plan, an intercarrier compensation reform plan filed July 24, 2006 by the NARUC Task Force. The proposal was described in a written *ex parte* filed January 30, 2007 by the Chairman of the Wyoming Public Service Commission, staff members from the Indiana, Maine, Nebraska, and Vermont Commissions, and the Supporters of the Missoula Plan, including AT&T, Global Crossing, Level 3 Communications, and 336 members of the Rural Alliance, among others. The Supporters of the Missoula Plan filed corrections to the proposal on February 5, 2007.

Interested parties may file comments on or before March 28, 2007 and reply comments on or before April 12, 2007. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 01–92. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Randy.Clarke@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

Documents in CC Docket No. 01–92 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com*.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte rules*. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Authority: 47 U.S.C. 152, 153, 154, 155.

Federal Communications Commission.

Kirk S. Burgee,

Chief of Staff, Wireline Competition Bureau.

[FR Doc. E7–5455 Filed 3–23–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 630

[Docket No: FTA–2007–27319]

RIN 2132–AA94

National Transit Database: Amendment To Reporting Requirements and Non-Substantive Technical Changes

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) provides interested parties with the opportunity to comment on proposed changes to the Federal Transit Administration's (FTA) National Transit Database (NTD) Uniform System of Accounts and Reporting System. The proposed changes will require recipients of formula grants for other than urbanized areas (Nonurbanized Area Formula Grants) to report annual transit data to the NTD. As mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), this proposed rule will also require the annual reporting of rural transit data as a condition for receiving grant awards under the Nonurbanized Area Formula Program.

Currently, FTA requires recipients of FTA Urbanized Area Formula Grants to provide an annual report to the Secretary of Transportation via the NTD using a uniform system of accounts and reporting system. This proposed rule will not affect existing mandatory reporting requirements for recipients of Urbanized Area Formula grants.

In addition, this proposed rule makes non-substantive changes, technical corrections, and conforming amendments to 49 CFR part 630, ''Uniform System of Accounts and Reporting System.'' Technical corrections and conforming amendments are needed to update the regulation and make certain provisions clearer. These changes will have no substantive effect on the regulated public.

DATES: Comments must be received on or before April 25, 2007. Late filed comments will be considered to the extent practicable.

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

Federal Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, 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.

Instructions: When submitting comments electronically to the Department's Docket Management System (DMS) Web site located at *http://dms.dot.gov*, you must use docket number 27319. This will ensure that your comment is placed in the correct docket. If you submit comments by mail, you should submit two copies and include the above docket number. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal identifying information. This means that if your comment includes any personal identifying information, such information will be made available to users of DMS. You may review the Department's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For program issues, Nancy Ody, Office of Budget and Policy, (202) 366–0177 (telephone); (202) 366–7989 (fax); or *nancy.ody@dot.gov* (e-mail). For legal issues, Shauna Coleman, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–3809 (fax); or *shauna.coleman@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA) primary national database for statistics on the transit industry. Section 3033 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub.

L. 109–59 (August 10, 2005)] amended the National Transit Database provisions under 49 U.S.C. 5335 to establish annual reporting requirements for grantees under 49 U.S.C. 5311, Formula grants for other than urbanized areas (Nonurbanized Area Formula Grants), while maintaining existing NTD annual reporting requirements for grantees under 49 U.S.C. 5307, Urbanized Area Formula grants. This rule proposes to revise 49 CFR part 630, the Uniform System of Accounts and Reporting System, to conform with 49 U.S.C. 5335, as amended by section 3033 of SAFETEA–LU.

Section 3013(b) of SAFETEA–LU amended 49 U.S.C. 5311(b)(4) to require that each grant recipient receiving Nonurbanized Area Formula Program Grants submit an annual report containing information on capital investment, operations, and service provided with grant funds from this program. The information contained in the report must include the following: total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. Section 5335(b) now requires that each recipient of assistance of Section 5311 funds, or any person that will receive benefits directly from these funds, be subject to these reporting requirements. The mandatory reporting criteria will assist FTA to understand the effectiveness of Nonurbanized Area Formula Grants in improving rural public transportation. These data are similar to those already collected by FTA for recipients of Urbanized Area Formula Grants (Section 5307) but are streamlined for rural recipients. Section 5335(b) continues to require reporting from recipients and beneficiaries of assistance under Section 5307.

On November 30, 2005, FTA published in the **Federal Register** (70 FR 71950, November 30, 2005) the procedures and start dates for mandatory annual reporting that State departments of transportation must follow when submitting rural transit data to FTA. These rural transit data reporting procedures and the mandatory reporting dates remain in effect for Fiscal Year (FY) 2007. The 2006 NTD Rural Data Reporting Manual and reporting instructions can be reviewed on the NTD Web site, *http://www.ntdprogram.gov*. FTA updates the Reporting Manual annually and based the 2006 Reporting Manual on a voluntary model developed in coordination with State departments of transportation. FTA is currently revising the 2007 Reporting Manual, in consultation with the State departments of transportation, to reflect States' experiences in using the voluntary rural reporting module in 2006, and to incorporate additional data points required in SAFETEA–LU. FTA will propose changes to the reporting requirements in the **Federal Register** for notice and comment in the spring of 2007.

As previously stated, the information requested from recipients and beneficiaries of Nonurbanized Area Formula Grants is similar to data collected by FTA for Urbanized Area Formula Grants. Section 5335(a) authorizes FTA to request and receive appropriate information from any source to include in its reporting requirements for recipients of Urbanized Area Formula Grants and Nonurbanized Area Formula Grants. As stated in the Conference Report accompanying SAFETEA–LU, Congress expected that the data collection requirements for NTD would be ''tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation's network of rural public transportation systems.'' (H.R. Rep. No. 109–203, at 943 (2005) (Conf. Rep.). FTA seeks to follow Congressional direction in our rural data collection efforts.

FTA recognizes that many recipients and beneficiaries of Section 5311 program funds believe that the newly-enacted reporting requirements are onerous. To address these concerns, FTA would like to offer an explanation as to why these reporting requirements are requested and how they will be used regarding current and future funding of rural public transportation. First, SAFETEA–LU significantly increases the annual apportionment amounts for the Nonurbanized Area Formula Grant program beyond TEA–21 enacted funding levels. In order to determine the effectiveness of program apportionment increases, FTA will use the information on rural public transportation programs to gauge how the increased apportionments affect recipients and beneficiaries of Section 5311 grants. Second, the collection of reporting data for this program will help FTA measure progress in addressing rural public transportation service needs. Only limited information on rural public transportation needs currently exists, and it cannot be used to analyze trends over time. The information required by Section 5311(b)(4) will allow FTA to better assess the needs of rural transit services. These data will be used to identify the sources of revenue used by rural transit providers, how they are being expended, the services that they are providing and the performance of these services in providing rural transportation.

FTA is accepting comments on substantive amendments that would implement the annual reporting requirements for Nonurbanized Area Formula grant recipients and beneficiaries. The proposed rule also contains technical corrections and conforming amendments, such as changes to the statutory references. Pursuant to 5 U.S.C. 553(b)(3)(A), such changes are ''interpretative'' in nature and, as such, FTA is not required to accept or consider comments on them. Therefore, the public should refrain from commenting on these interpretative changes to 49 CFR part 630.

Regulatory Process Matters

Executive Order 12866

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This proposed rule would amend the NTD reporting and recordkeeping requirements to require recipients of Nonurbanized Area Formula Grants to report annual transit data to the NTD following previously established guidelines for a voluntary State-based rural data module developed in consultation with State departments of transportation.

FTA has preliminarily determined that this action is not a significant regulatory action under section 3(f) of Executive Order 12866, and anticipates that the direct economic impact of this rulemaking would be minimal. Section 5335, as amended by SAFETEA–LU, mandates the additional requirement that recipients and beneficiaries of Nonurbanized Area Formula Grants report annual transit data to the NTD. FTA considers this proposal as a way to clarify existing regulatory requirements, and believes that the proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, the proposed changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Executive Order 13132

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. FTA has analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this proposed action would not have sufficient implications to warrant the preparation of a federalism assessment. FTA has also determined that this proposed action would not preempt any State law or State regulation or affect States' abilities to discharge traditional government functions. FTA invites State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Indian communities and that impose ''substantial and direct compliance costs'' on such communities. This proposed rule would require tribes that are recipients to report to the NTD. In addition, this proposed rule would require tribes that are subrecipients to report NTD data to the State. However, FTA has analyzed this proposed rule under Executive Order 13175 and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. Therefore, a tribal impact statement is not required. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals may have on Indian communities.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity, and if adoption of proposals contained in this notice could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (Pub. L. 104–13, 109 Stat. 163), FTA may not conduct or sponsor, and a person is not required to respond to or may not be penalized for failing to comply with, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

FTA paperwork collection number 2132–0008 covers the information collection requirements of this proposed rule. OMB approved an extension without change of the collection number. The new expiration date of this collection number is August 31, 2008.

Unfunded Mandates Assessment

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FTA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

National Environmental Policy Act

The National Environmental Policy Act of 1969, (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The proposed action would not have any effect on the quality of the environment under the National Environmental Policy Act of 1969.

Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 630

Accounting, Uniform System of Accounts.

For the reasons discussed in the preamble, the Federal Transit Administration proposes to revise 49 CFR Part 630 as follows:

PART 630—REPORTING AND RECORDKEEPING REQUIREMENTS

Subpart A—General

Sec.

630.1 Purpose.
630.2 Scope.
630.3 Definitions.
630.4 Requirements.
630.5 Failure to report data.
630.6 Late and incomplete reports.
630.7 Failure to respond to questions.
630.8 Questionable data items.
630.9 Notice of FTA action.
630.10 Waiver of reporting requirements.
630.11 Data adjustments.
630.12 Display of OMB control numbers.
Appendix A—Overview and Explanation of the FTA National Transit Database Uniform System of Accounts and Reporting System

Authority: 49 U.S.C. 5301–5340 and 49 CFR 1.51.

§ 630.1 Purpose.

The purpose of this part is to prescribe requirements and procedures necessary for compliance with the National Transit Database Uniform System of Accounts and Reporting System mandated by 49 U.S.C. 5335, and to set forth the procedures for addressing a reporting agency's failure to comply with these requirements.

§ 630.2 Scope.

This part applies to all applicants and any person that receives benefits directly from a grant under 49 U.S.C. 5307 or 5311.

§ 630.3 Definitions.

(a) Except as otherwise provided, terms defined in 49 U.S.C. 5301 *et seq.* are used in this part as so defined.

(b) Terms defined in the current edition of the National Transit Database Uniform System of Accounts and the annual Reporting Manual are used in this part as so defined.

(c) For purposes of this part:

Administrator means the Federal Transit Administrator or the Administrator's designee.

Applicant means an applicant for assistance under 49 U.S.C. 5307 or 5311.

Assistance means Federal financial assistance for the acquisition, construction, or operation of public transportation services.

Beneficiary means any organization operating and delivering transit services that receives benefits from assistance under 49 U.S.C. 5307 or 5311.

Chief Executive Officer (CEO) means the principal executive in charge of and responsible for the reporting agency.

Current edition of the National Transit Database Uniform Systems of Accounts and the Reporting Manual means the most recently issued edition of the reference documents.

Days mean calendar days.

Public Transportation Agency or transit agency means an agency authorized to transport people by bus, rail, or other conveyance, either publicly or privately owned, and which provides to the public general or special service (but not including school, charter, sightseeing service or intercity bus transportation or intercity rail transportation provided by the entity described in 41 U.S.C. Chapter 243 (or a successor to that entity) on a regular and continuing, scheduled or unscheduled basis. Transit agencies are classified according to the mode of transit service operated. A multi-mode transit agency operates two or more modes, which are defined in the current editions of the National Transit Database Uniform System of Accounts and the Reporting Manual.

Reference Document(s) means the current editions of the National Transit Database Uniform System of Accounts and the Reporting Manual. These documents are subject to periodic revision. Beneficiaries and applicants are responsible for using the current editions of the reference documents.

Reporting agency means the agency required to submit a report under 49 U.S.C. 5335.

§ 630.4 Requirements.

(a) *National Transit Database Uniform System of Accounts.* Each applicant for and beneficiary of Federal financial assistance under 49 U.S.C. 5307 or 5311 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the current edition of the ''National Transit Database Uniform System of Accounts''; the ''Reporting Manual''; Circulars; and other reference documentation.

(b) *Reporting system.* Each applicant for, and beneficiary of, Federal financial assistance under 49 U.S.C. 5307 or 5311 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the current edition of the ''National Transit Database Uniform System of Accounts''; the ''Reporting Manual''; Circulars; and other reference documentation.

(c) *Copies.* Copies of reference documents are available from the National Transit Database Web site located at *http://www.ntdprogram.gov*. These reference documents are subject to periodic revision. Revisions of reference documents will be posted on the National Transit Database Web site and a notice of any significant changes in these reference documents will be published in the **Federal Register**. On an annual basis, FTA will mail reporters a CD containing a copy of the most recent version of the Reporting Manual along with copies of other NTD data publications.

§ 630.5 Failure to report data.

Failure to report data in accordance with this part will result in the reporting agency being ineligible to receive any section 5307 or 5311 grants directly or indirectly (*e.g.*, a public agency receiving FTA funds through another public agency rather than directly from FTA). This ineligibility applies to all reporting agencies without regard to the size of the urbanized area served by the reporting agency.

§ 630.6 Late and incomplete reports.

(a) *Late reports.* Each reporting agency shall ensure that its report is received by FTA on due dates prescribed in the annual Reporting Manual. A reporting agency may request an extension of 30 days after the due date. FTA will treat a failure to submit the required report by the due date as failure to report data under § 630.5.

(b) *Incomplete reports.* FTA will treat any report or submission that does not contain all the necessary reporting forms, data, or certifications for services directly operated by the reporting agency in substantial conformance with the definitions, procedures, and format requirements set out in the National Transit Database Uniform System of Accounts and Reporting System as failure to report data under § 630.5. FTA will treat the submission of a report with incomplete data or missing forms for services provided under contract to the reporting agency by private or public carriers as failure to report data under § 630.5 provided that the reporting agency has exhausted all possibilities for obtaining this information.

§ 630.7 Failure to respond to questions.

FTA will review each section 5335 report to verify the reasonableness of the data submitted. If any of the data do not appear reasonable, FTA will notify the reporting agency of this fact and request written justification to document the accuracy of the questioned data. Failure of a reporting agency to make a good faith written response to this request will be treated under § 630.5 as failure to report data.

§ 630.8 Questionable data items.

FTA may enter a zero or adjust any questionable data item(s) in a reporting agency's section 5335 report used in computing the section 5307 or 5311 apportionment. These adjustments may be made if any data appear inaccurate or have not been collected and reported in accordance with FTA's definitions and/or confidence and precision levels, or if there is lack of adequate documentation or a reliable recordkeeping system.

§ 630.9 Notice of FTA action.

Before taking final action under §§ 630.5, 630.6, 630.7, or 630.8, FTA will transmit a written request to the reporting agencies to provide the necessary information within a specified reasonable period of time. FTA will advise the reporting agency of its final decision in this regard.

§ 630.10 Waiver of reporting requirements.

Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a written showing that the party seeking the waiver cannot furnish the required data without unreasonable expense and inconvenience. Each waiver will be for a specified period of time.

§ 630.11 Data adjustments.

Errors in the data used in making the apportionment may be discovered after any particular year's apportionment is completed. If so, FTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

§ 630.12 Display of OMB control numbers.

All of the information collection requests in this part have been approved by the Office of Management and Budget under control number 2132–0008.

Appendix A to Part 630—Overview and Explanation of the FTA National Transit Database Uniform System of Accounts and Reporting System

A. Introduction

Title 49 U.S.C. 5335 provides for establishment of two information-gathering analytic systems: the National Transit Database Uniform System of Accounts, and a Reporting System for the collection and dissemination of public transportation financial and operating data by uniform

categories. The purpose of these two systems is to provide information on which to base public transportation planning and public sector investment decisions. FTA administers the section 5335 Reporting System.

The National Transit Database Uniform System of Accounts consists of:

- Various categories of accounts and records for classifying financial and operating data;
- Precise definitions as to what data elements are to be included in these categories; and
- Definitions of practices for systematic collection and recording of such information.
- While a specific accounting system is recommended for this recordkeeping, it is possible to make a translation from most existing accounting systems to comply with the section 5335 Reporting System, which consists of forms and procedures:
- For transmitting data from transit agencies to FTA;
- For editing and storing the data; and
- For FTA to report information to various groups.

Under the terms of section 5335, all applicants for, and beneficiaries of, Federal assistance under sections 5307 or 5311 must comply with the Reporting System and the National Transit Database Uniform System of Accounts to be eligible for Federal grants. It should be noted that separate and complete section 5335 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period.

B. Purpose of This Appendix

This appendix presents a general introduction to the structure and operation of the two Systems. It is not a detailed set of instructions for completion of a section 5335 report or establishment of a System of Accounts and Records. Persons in need of more information should refer to the current editions of the National Transit Database Uniform System of Accounts and the Reporting Manual, available from the NTD Web site, *http://www.ntdprogram.gov* under the section titled *NTD Publications and Reference Materials.*

FTA periodically updates these reference documents or supplements them to revise or clarify section 5335 definitions, reporting forms, and instructions. Section 630.4 makes clear that reporting agencies must use the most recent edition of reference documents and reporting forms to comply with the section 5335 requirements. FTA therefore encourages local officials to check with FTA before completing a section 5335 report to avoid unnecessary efforts and delays.

C. Special (Reduced) Reporting Requirements

Certain information collection and recording requirements were tailored to accommodate the unique characteristics of certain transportation modes. Reduced requirements were permitted during limited time periods to ease transition to complete reporting for these modes. Reduced reporting requirements for commuter rail systems and vanpool services ended in the 1987 report year. In addition, the reduced reporting requirements for private subscription and private noncontract conventional bus service is eliminated for the 1992 report year. At the direction of Congress, the NTD began to use new forms for reporting after 2001.

D. A Single Required Level of Section 5335 Reporting and Recordkeeping

FTA has developed a single required reporting format for use by all transit agencies. The single required level accommodates variations in size, local laws, and modes of transport.

The National Transit Database Uniform System of Accounts also contains additional detailed financial and operational data that can be submitted at the reporting agency's option. Because the optional subcategories of data can be aggregated to the required level, these subcategories define the more aggregated data. The definitions for data reported at the required level are consistent with, and summarized from, those for the more detailed optional data.

E. The National Transit Database Uniform System of Accounts

The National Transit Database Uniform System of Accounts consists of a financial accounting and operational recordkeeping system designed for public transportation managers and planners. Its uniformity permits more thorough and accurate comparisons and analyses of different transit agencies' operating costs and efficiencies than if each had a unique recordkeeping and accounting system. The National Transit Database Uniform System of Accounts establishes various categories of accounts and records for classifying public transportation operating and financial data, and includes precise definitions of transportation terminology to ensure that all users share a common understanding of how to use and interpret the collected data.

(1) Use of the Accounts and Records System

Beneficiaries of, and applicants for, Federal assistance are not required to use the National Transit Database Uniform System of Accounts in keeping their own records. If an applicant or beneficiary chooses not to use the National Transit Database Uniform System of Accounts, however, it must nevertheless be able to translate its accounts and records system to the accounts prescribed in the National Transit Database Uniform System of Accounts. The accounting system that the reporting agency uses must permit preparation of financial and operating data that conform to the National Transit Database Uniform System of Accounts directly from its records at the end of the fiscal year, and must be consistent with the following:

(i) The data must have been developed using the accrual method of accounting. Those transit systems that use cash-basis accounting, in whole or in part, must make work sheet adjustments in their account books to record the data on the accrual basis.

(ii) Reporting agencies must follow or be able to directly translate their system to the accounting treatment specified in the publication ''National Transit Database Uniform System of Accounts.''

(iii) The reporting agency's accounting categories (chart of accounts) must be correctly related, using a clear audit trail, to the accounting categories prescribed in the National Transit Database Uniform System of Accounts.

(2) General Structure of the National Transit Database Uniform System of Accounts

In the National Transit Database Uniform System of Accounts, operating expenses incurred by the transit system are classified by transit mode. FTA developed expense classifications in two dimensions for uniformity and to enhance the usefulness of the data collected under section 5335. The classifications are typical of those of most transit accounting systems. The two dimensions are:

(i) The type of expenditure (expense object class); and

(ii) The function or activity performed.

Operating expenses can be identified either in function or object class categories, or cross-classified, allowing identification using both categories. The National Transit Database Uniform System of Accounts also categorizes expenditures by four basic functions submitted by all reporting agencies. A limited number of additional details are optional. All reporting agencies are required to use a single set of object class categories.

The National Transit Database Uniform System of Accounts has a single set of revenue object classes to be used by all reporting agencies, and provides a limited number of additional details that are optional.

The National Transit Database Uniform System of Accounts provides a classification for sources and uses of capital to be submitted by all reporting agencies. These classifications replace capital information previously required on the balance sheet and capital subsidiary schedule.

The National Transit Database Uniform System of Accounts also includes collecting and recording of certain operating data elements.

Details and definitions of the expense object classes, functions, revenue object classes, sources and uses of capital, and operating data elements are contained in the current edition of the ''Reporting Manual,'' which FTA updates annually, and the National Transit Database Uniform System of Accounts reference documents.

F. The Reporting System

(1) The section 5335 Reporting System consists of forms and procedures for transmitting data from transit agencies to FTA. These forms are available in the annual Reporting Manual on the NTD Web site, *http://www.ntdprogram.gov*, under the section titled *NTD Publications and Reference Materials.* All beneficiaries of Federal financial assistance must submit the required forms and information in order to allow FTA to: (1) Store and generate information on the Nation's transportation systems; and (2) calculate apportionment allocations for the section 5307 formula grant program (for urbanized areas of 200,000 or more inhabitants), or the section 5311 formula grant program. Agencies submitting

section 5335 reports may only submit data for transit services that they directly operate and purchase under contract from public agencies and/or private carriers.

Separate and complete section 5335 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period. The reporting requirements include the following major segments, which are based on information assembled through the National Transit Database Uniform System of Accounts:

1. Capital report.
2. Revenue report.
3. Expense report.
4. Nonfinancial service and operating data reports.
5. Miscellaneous auxiliary questionnaires and subsidiary schedules.
6. Vehicle Fleet Data.
7. Data Declarations.

(2) The section 5335 Reporting System includes two data declarations.

(a) The Chief Executive Officer (CEO) Certification.

The CEO of each reporting agency is required to submit a certification with each annual section 5335 report. The certification must attest:

- To the accuracy of all data contained in the section 5335 report;
- That all data submitted in the section 5335 report are in accord with section 5335 definitions;
- If applicable, that the reporting agency's accounting system used to derive all data submitted in the section 5335 report is the system set forth in the National Transit Database Uniform System of Accounts and that a section 5335 report using this system was certified by an independent auditor in a previous report year;
- If applicable, the fact that the reporting agency's internal accounting system is other than the National Transit Database Uniform System of Accounts, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, using a clear audit trail, to the accounting treatment and categories specified by the National Transit Database Uniform System of Accounts, and (iii) accounting system and direct translation to the National Transit Database Uniform System of Accounts are the same as those certified by an independent auditor in a previous reporting year; and
- That a 100% count of trips and passenger mile data for each mode/type of service meets FTA requirements.

(b) Auditor Statement on Section 5335 Financial Data Reporting Forms and Section 5307 or Section 5311 Data.

Reporting agencies must submit with their section 5335 report a statement signed by an independent public accountant or other responsible independent entity such as a state audit agency. This statement must express an opinion on whether the financial data reporting forms in the section 5335 report present fairly, in all material respects, the information required to be set forth therein in accordance with the National Transit Database Uniform System of Accounts. The statement shall also indicate whether any of the reporting forms or data elements do not conform to the section 5335 requirements, and describe the discrepancies. The statement must consider both required and optional data entries.

Each agency is required to file an Auditor Statement unless it received a written waiver from FTA. The criteria in either Condition I or Condition II for granting a financial data waiver are:

Condition I. The reporting agency (1) has adopted the National Transit Database Uniform System of Accounts and (2) has previously submitted a section 5335 report that was compiled using the National Transit Database Uniform System of Accounts and was reviewed by an independent auditor; or

Condition II. The reporting agency (1) uses an internal accounting system other than the accounting system prescribed by the National Transit Database Uniform System of Accounts, (2) uses the accrual basis of accounting, (3) directly translates the system and accounting categories, using a clear audit trail, to the accounting treatment and categories specified by the National Transit Database Uniform System of Accounts, and (4) has previously submitted a section 5335 report that was compiled using the same internal accounting system and translation to the National Transit Database Uniform System of Accounts and was reviewed by an independent auditor.

For agencies that have received a waiver, the CEO annual Certification must verify that the financial data meet one of the above two conditions.

Additionally, all reporting agencies that are in or serve urbanized areas with populations of 200,000 or more and whose report covers 100 or more vehicles in annual maximum service across all modes and types of service must have an independent auditor review all section 5335 data used in the section 5307 formula allocation. The statement should discuss, by mode and type of service: Directional route miles, vehicle revenue miles, passenger miles, and operating cost, and include both directly operated and purchased service. The independent, certified public accountant shall perform the verification in accordance with the ''Statements on Standards for Attestation Engagements'' issued by the American Institute of Certified Public Accountants. The specific procedures to be reviewed are described in the most recent Section 5335 Reporting Manual.

Issued in Washington, DC, this 20th day of March, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–5417 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AV10

Migratory Bird Permits; Removal of Migratory Birds From Buildings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing migratory bird permitting. We propose to amend 50 CFR part 21 to allow removal of migratory birds (other than federally listed threatened or endangered species, bald eagles, and golden eagles) from buildings in which the birds may pose a threat to themselves, to public health and safety, or to commercial interests.

DATES: Send comments on this proposal by May 25, 2007.

ADDRESSES: For detailed instructions on submitting comments, please see ''Public Participation'' below.

FOR FURTHER INFORMATION CONTACT: George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. The delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976. A list of migratory bird species protected by the MBTA can be found at 50 CFR 10.13.

To simplify removal of migratory birds from buildings in which their presence may be a threat to the birds, to

public health and safety, or to commercial interests, we propose to allow the removal of any migratory bird, except a threatened or endangered species, a bald eagle, or a golden eagle, from any building in which a bird might be trapped, without requiring a migratory bird permit to do so. The bird must be captured using a humane method and promptly released to the wild. This regulation does not allow removal of birds or nests from the outside of buildings without a permit.

We believe that this regulatory addition will facilitate removal of birds from buildings—an action that would otherwise require a migratory bird permit. Our proposed changes are detailed below, in the Proposed Regulation Promulgation section of this document.

Public Participation

You may submit comments, identified by RIN 1018–AV10, by any of the following methods:

- *E-mail address for comments: BirdsinBuildings@fws.gov.* Include RIN number 1018–AV10 in the subject line of the message.
- *Fax:* 703–358–2217.
- *Mail:* Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, VA 22203–1610.
- *Hand Delivery:* Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, VA 22203–1610.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Following review and consideration of comments, we will issue a final rule on the proposed regulation changes.

Instructions: When submitting electronic comments, please include your name and return address in your message, and identify it as comments on RIN 1018–AV10 in the subject line of your message.

When submitting written comments, please include your name and return address in your letter and identify it as comments on RIN 1018–AV10. To facilitate compilation of the Administrative Record for this action, you must submit written comments on 8½-inch-by-11-inch paper.

All comments on the proposed rule, including any personal information received, will be available for public inspection during normal business hours at Room 4091 at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, VA 22203–1610. The complete file for this proposed rule is available, by appointment, during normal business hours at the same address. You may call 703–358–1825 to make an appointment to view the file.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. An individual respondent may request that we withhold his or her home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety. We will not consider anonymous comments.

Required Determinations

Clarity of This Regulation

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ ''and a numbered heading; for example: ''§ 21.12-General exceptions to permit requirements.'') (5) Does the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble help you to understand the proposed rule? What else could we do the make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov.*

Regulatory Planning and Review

In accordance with the criteria in E.O. 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This proposed rule would not raise novel legal or policy issues. The proposed provision is in compliance with other laws, policies, and regulations.

b. This rule would not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are negligible costs associated with this rule.

c. This rule would not create inconsistencies with other agencies' actions. The rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

d. This rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of birds in buildings.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities, because the

changes we are proposing are intended primarily to simplify removal of birds from structures in which the birds may either pose a threat to public health and safety or commercial interests, or be at risk themselves.

The costs associated with this change to our regulations would be negligible or non-existent. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This rule would not have an annual effect on the economy of $100 million or more.

b. This rule would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This rule would not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule would not have significant takings implications. A takings implication assessment is not required. This rule would not contain a provision for taking of private property.

Federalism

This rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from allowing individuals, businesses, or government offices to remove migratory birds from buildings.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. There would be no new information collection requirements associated with this change to our regulations. We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and Part 516 of the U.S. Department of the Interior Manual (516 DM). A change to our regulations allowing the removal of migratory birds from buildings would not have a significant environmental impact.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule would not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would affect only removal of birds from structures in limited circumstances, it is not a significant regulatory action under E.O. 12866, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

The change we propose is to allow people to remove birds protected under the Migratory Bird Treaty Act from buildings. We do not believe that there are significant environmental impacts of this action.

Socioeconomic. We do not expect the proposed action to have discernible socioeconomic impacts.

Migratory bird populations. This rule would not alter the take of migratory birds from the wild. It would not change migratory bird populations.

Endangered and Threatened Species. The proposed regulation is for migratory birds other than threatened or endangered species. It would not affect threatened or endangered species or habitats important to them.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat (16 U.S.C. 1536 (a)(2)). The proposed change to our regulations would not affect listed species.

Author

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Amend § 21.12 by:

a. Revising the introductory paragraph and paragraph (a);

b. Redesignating paragraphs (b), (c), and (d) as paragraphs (b) (1), (b)(2), and (c) and adding a heading to new paragraph (b);

c. Adding a new heading to new paragraph (c); and

d. Adding a new paragraph (d), to read as set forth below.

§ 21.12 General exceptions to permit requirements.

The following persons or entities under the following conditions are exempt from the permit requirements:

(a) *Employees of the Department of the Interior (DOI):* DOI employees authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703–711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) *Employees of certain public and private institutions:*

(1) * * *

(2) * * *

(c) *Licensed veterinarians:*

* * * * *

(d) *General public:* Any person may remove a migratory bird from the interior of a building or structure under the following conditions. If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

(1) You may humanely remove a trapped migratory bird from the interior of a residence or a commercial or government building without a Federal permit if the migratory bird:

(i) Poses a health threat (for example, through damage to foodstuffs);

(ii) Is attacking humans, or poses a threat to human safety because of its activities (such as opening and closing automatic doors);

(iii) Poses a threat to commercial interests, such as through damage to products for sale; or

(iv) May injure itself because it is trapped.

(2) You must use a humane method to capture the bird or birds. You may not use adhesive traps to which birds may adhere (such as glue traps) or any other method of capture likely to harm the bird.

(3) After capture, you must promptly release the bird or birds to the wild in habitat suitable for the species.

(4) If a bird is injured or orphaned during the removal, the property owner is responsible for promptly transferring it to a federally permitted migratory bird rehabilitator.

(5) You may not lethally take a migratory bird for these purposes. If your actions to remove the trapped migratory bird are likely to result in its lethal take, you must possess a Federal Migratory Bird Permit. However, if a bird you are trying to remove dies, you must dispose of the carcass unless you have reason to believe that a museum or scientific institution might be able to use it. In that case, you should contact your nearest Fish and Wildlife Service office or your State wildlife agency about donating the carcass.

(6) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (*see* 50 CFR 17.21 and 50 CFR 17.31).

(7) You will need a permit from your regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (*see* 50 CFR Part 22).

(8) Your action must comply with State and local regulations and ordinances. You may need a State, tribal, or territorial permit before you can legally remove the bird or birds.

(9) If a nest, eggs, or nestlings are present, you must seek the assistance of a federally-permitted migratory bird rehabilitator in removing them. The rehabilitator is then responsible for handling them properly.

Dated: March 2, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–5120 Filed 3–23–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 031407A]

RIN 0648–AU03

Fisheries of the Exclusive Economic Zone Off Alaska; Salmon Bycatch

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 84 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 84 would exempt vessels participating in an inter-cooperative agreement (ICA) to reduce salmon bycatch from Chinook and chum salmon savings area closures, and exempt vessels participating in non-pollock trawl fisheries from the chum salmon savings area. This action is intended to promote the goals and objectives of the FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary to reduce salmon bycatch in the Bering Sea and Aleutian Islands management area (BSAI).

DATES: Comments on Amendment 84 must be received on or before May 25, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian, Records Officer. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- FAX to 907–586–7557;
- E-mail to *BSA84–A-NOA@noaa.gov* and include in the subject line of the E-mail comment the document identifier: Amendment 84. E-mail comments, with or without attachments, are limited to 5 megabytes; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendment 84 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above, from the Alaska Region website at *http://www.fakr.noaa.gov* or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228, or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public

review and comment. This requirement is satisfied by this notice of availability for Amendment 84.

Pacific salmon are caught incidentally in the BSAI trawl fisheries, especially in the pollock fishery. Of the five species of Pacific salmon, Chinook salmon (*Onchorynchus tshawytscha*) and chum salmon (*O. keta*) are most often incidentally caught in the pollock fishery. Pacific salmon are placed into two categories for purposes of salmon bycatch management: Chinook and non-Chinook. The non-Chinook category is comprised of chum, sockeye (*O. nerka*), pink (*O. gorbuscha*), and coho (*O. kisutch*) salmon. However, from 2001 through 2004, chum salmon represented about 98 percent of non-Chinook salmon harvested incidentally in the pollock trawl fisheries. For convenience, all non-Chinook salmon are referred to as chum salmon.

To address Chinook salmon bycatch concerns, the Council adopted several management measures designed to reduce overall Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted, and NMFS approved, Amendment 21b to the FMP. Based on historic information on salmon bycatch, Amendment 21b established a Chinook salmon savings area (60 FR 31215, November 29, 1995). Under Amendment 21b, the Chinook salmon savings area closed when the incidental catch of Chinook salmon in BSAI trawl fisheries reached 48,000 fish. Amendment 58 to the FMP revised the Chinook salmon savings area measures (65 FR 60587, October 12, 2000). Amendment 58 reduced the Chinook salmon bycatch limit from 48,000 fish to 29,000 fish, mandated year-round accounting of Chinook bycatch in the directed pollock fishery, revised the boundaries of the Chinook salmon savings area closure, and implemented new closure dates. The timing of the closure depends on when the limit is reached. If the limit is reached:

- Before April 15, the area closes immediately through April 15. After April 15, the area re-opens, but closes again from September 1 through December 31.
- Between April 15 and September 1, the area would close from September 1 through the end of the year.
- After September 1, the area closes immediately through the end of the year.

The Chinook salmon savings area was further modified by Amendment 82 to the FMP (70 FR 9856, March 1, 2005). Amendment 82 established a separate Aleutian Islands subarea bycatch limit that, when reached, closes the existing Chinook salmon savings area located in the Aleutian Islands subarea (Area 1). The Chinook salmon savings area located in the Bering Sea subarea remained unchanged, but was designated as Area 2.

The Council also adopted a time-area closure designed to reduce overall chum salmon bycatch in the BSAI trawl fisheries. In 1995, Amendment 35 to the FMP established the chum salmon savings area (60 FR 34904, July 5, 1995). This area is closed to all trawling from August 1 through August 31 of each year. Additionally, if 42,000 chum salmon are caught in the Catcher Vessel Operational Area (CVOA) during the period August 15 through October 14, the area remains closed for the remainder of the calendar year.

Community development quota (CDQ) groups receive, along with allocations of groundfish CDQ, individual allocations of Chinook and non-Chinook annual bycatch amounts. Vessels groundfish CDQ fishing are not subject to the chum and Chinook salmon savings area closures that apply to the non-CDQ pollock fisheries. Rather, the Chinook salmon savings area closes to vessels directed fishing for pollock for a CDQ group once that CDQ group has reached its Chinook salmon bycatch limit. The chum salmon savings area closes to vessels using trawl gear to fish for groundfish CDQ once that CDQ group has reached its non-Chinook salmon bycatch limit. Thus, individual CDQ groups are subject to salmon savings area closures based on their respective catch of chum or Chinook salmon while groundfish CDQ fishing.

The Chinook and chum salmon savings areas were adopted based on historic observed salmon bycatch rates and were designed to avoid high spatial and temporal levels of salmon bycatch. From 1990 through 2001, the BSAI salmon bycatch average was 37,819 Chinook and 69,332 chum annually. Recently, however, salmon bycatch numbers have increased substantially. In 2003, 54,911 Chinook salmon and 197,091 chum salmon were taken incidentally in the trawl fisheries. In 2004, salmon bycatch increased substantially to 62,493 Chinook and 465,650 chum salmon. Bycatch amounts remained high in 2005 and totaled 67,541 Chinook and 116,999 chum salmon.

Since its establishment in 1995, the Chinook salmon savings area closure only has been triggered since 2003. The Chinook salmon bycatch limit was not reached prior to 2003. In 2003, the Chinook salmon savings area closed to directed trawl fishing for non-CDQ pollock on September 1, with the closure remaining in effect until the end of the calendar year. In 2004, the Chinook salmon savings area closed to directed trawl fishing for non-CDQ pollock on September 5 through the end of the year. In 2005, the Chinook salmon savings area in the Bering Sea subarea was closed to directed trawl fishing for non-CDQ pollock on September 1 through the end of the year.

Since establishment of the chum salmon savings area in 1995, the bycatch of non-Chinook salmon triggered closures in 2002, 2003, 2004, and 2005. In these years, the chum salmon savings area closed to non-CDQ trawl fisheries in September and October.

Anecdotal information from participants in the BSAI trawl fisheries indicated that salmon bycatch rates may be higher outside the Chinook and chum salmon savings area. In February 2005, the Council initiated an EA/RIR/IRFA to explore alternatives to the current salmon bycatch measures. Spatial and temporal comparisons of non-CDQ vessels fishing outside of the salmon savings areas with CDQ vessels fishing inside of the salmon savings areas indicated that bycatch rates were much higher outside of the savings areas.

In October 2005, the Council adopted Amendment 84 to the FMP. Amendment 84 would exempt non-CDQ and CDQ pollock vessels participating in a salmon bycatch reduction ICA from closures of the Chinook and chum salmon savings areas in the Bering Sea. Additionally, vessels participating in trawl fisheries for species other than pollock would be exempt from chum salmon savings area closures. The Council intends to use NMFS salmon bycatch information to assess the effectiveness of regulations implementing Amendment 84 at reducing salmon bycatch in the directed pollock fisheries. The Council also asked for participants in the salmon bycatch reduction ICA to report annually on how effective the ICA appears to be at reducing salmon bycatch. The Council also will gather additional information to assess the effectiveness of the ICA in coordinating voluntary salmon bycatch reduction efforts by participants in the Bering Sea pollock fisheries. Additionally, this information could be used to further assess whether participants fishing in the current salmon savings areas continue to encounter lower salmon bycatch rates than participants fishing outside of salmon savings areas.

The Council is also developing a separate FMP amendment that could result in additional management measures to reduce salmon bycatch.

These measures could include altering the geographic coordinates of the Chinook and chum salmon savings areas based on recent bycatch rates, and implementing an individual salmon bycatch accountability program. However, the Council determined that consideration of these management measures would require additional time and chose to expedite Amendment 84 while the Council develops the second amendment.

Public comments are being solicited on proposed Amendment 84 through the end of the comment period stated (see **DATES**). A proposed rule that would implement Amendment 84 may be published in the **Federal Register** for public comment, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 84 to be considered in the approval/disapproval decision of the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in that decision. To be considered, written comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Dated: March 20, 2007.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–5474 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 57

Monday, March 26, 2007

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

March 20, 2007.

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, Pub. L. 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) 720–8681.

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.

National Agricultural Statistics Service

Title: Fruits, Nut, and Specialty Crops.

OMB Control Number: 0535–0039.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to cover all agricultural cash receipts. The authority to collect these data activities is granted under U.S. Code title 7, Section 2204. Information is collected on a voluntary basis from growers, processors, and handlers through surveys.

Need and Use of the Information: Data reported on fruit, nut, and Hawaii tropical crops are used by NASS to estimate acreage, yield, production, utilization, and crop value in States with significant commercial production. These estimates are essential to farmers, processors, and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected supplies of crop under federal and state market orders as well as competitive fruits and nuts.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 47,692.

Frequency of Responses: Reporting: On occasion; Annually; Quarterly; Semi-annually; Monthly.

Total Burden Hours: 9,430.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–5421 Filed 3–23–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Stamp Program: Federal Collection of State Plan of Operations, Operating Guidelines and Forms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment, a summary of a proposed information collection relating to several State Agency Food Stamp Program administrative matters. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0083.

DATES: Comments on this notice must be received by May 25, 2007, to be assured of consideration.

ADDRESSES: 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman at (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Expiration Date: July 2007.

Type of Request: Revision of a currently approved collection.

Abstract: In accordance with section 11(e) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2020(e), State agencies are required to submit a Plan of Operation specifying the manner in which the Food Stamp Program will be conducted. The State Plan of Operations, in accordance with current rules at 7 CFR 272.2, consists of a Federal/State Agreement, annual budget and activity statements, and specific attachments relating to the State Plan of Operation. State Plans of Operation are a one-time effort with updates that are provided as necessary.

Under section 16 of the Act, 7 U.S.C. 2025, the Secretary is authorized to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the FSP. Under corresponding FSP regulations at 7 CFR 272.2, the State agencies must submit annually to FNS for approval, a Budget Projection Statement (Form FNS–366A), which projects the total costs for major areas of FSP operations, and a Program Activity Statement (Form FNS–366B), which provides a summary of FSP operations during the preceding fiscal year. The reports are required to substantiate the costs the State agency expects to incur during the next fiscal year. Form FNS–366A is submitted annually by August 15, for the upcoming fiscal year and Form FNS–366B must be submitted no later than 45 days after the end of each State agency's fiscal year.

Since October 2002, FNS has used the quality control (QC) data to collect information about timeliness of application processing. On February 7, 2005, the final rule on high performance bonuses was published in the **Federal Register** (70 FR 6313), and included a provision regarding the use of QC data to determine each State's rate of application processing timeliness. Accordingly, in March 2005, FNS notified State agencies that it was eliminating the application timeliness data on the FNS–366B, and instead will continue to rely on the QC data to determine States' application timelines processing rates.

In fiscal year (FY) 2006, 49 percent of State agencies submitted the FNS–366A electronically and 51 percent submitted a paper report. For FY 2005, a total of 60 percent of State agencies submitted the FNS–366B electronically with the remaining 40 percent submitting paper reports.

Finally, State agencies are required to submit certain other documents to FNS for review relating to certain specific activities that the State agency may choose to do. These other submissions include a written action plan, called an Advance Planning Document (APD), if the State agency wishes to acquire proposed automated data processing (ADP) services, systems or equipment, an outreach plan if the State elects to do program information activities, and updates related to options exercised under the Food Stamp Act, as amended.

Respondents: State agencies that administer the FSP.

Number of Respondents: 53.

Estimated Number of Responses per Respondent:

Plan of Operation Updates: 53 State agencies once a year.

Form FNS–366A: 53 State agencies once a year.

Form FNS–366B: 53 State agencies once a year.

Other APD, Plan, or Update Submissions: Up to 53 State agencies may submit one or more APD, plan or update submission averaging 4.75 submissions per respondent per year or 252 total responses.

Estimate of Burden:

Plan of Operation Updates: The State agencies submit Plan updates at an estimate of 10 hours per respondent, or 530 total hours.

Form FNS–366A: The State agencies submit Form FNS–366A at an estimate of 13 hours per respondent, or 689 total hours.

Form FNS–366B: The total burden for the collection of information for Form FNS–366B is 18 hours per respondent, or 954 hours.

Other APD, Plan, or Update Submissions: We estimate that up to 53 States may submit one or more submissions for an APD, plan, or update submission for a total of 252 annual responses at an average estimate of 2.681 hours per respondent, or 675.6 hours.

Estimated Total Annual Burden on Respondents: The total annual reporting and recordkeeping burden for OMB No. 0584–0083 is estimated to be 2,848.5 hours, an increase of 100 hours. The increase is due to a re-estimate of the time it takes for Other APD, Plan, or Update submissions.

Dated: March 20, 2007.

George A. Braley,

Acting Administrator Food and Nutrition Service.

[FR Doc. E7–5442 Filed 3–23–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Battle Park/Mistymoon Allotment Management Plan on the Powder River Ranger District, Bighorn National Forest, Big Horn County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to update range management planning on the Battle Park Cattle and Horse allotment and the Mistymoon Sheep and Goat livestock grazing allotment, which will result in development of new allotment management plans (AMPs). The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments and input regarding the proposal were requested from the public, other groups and agencies via direct mailing on August 16, 2004. Additional comments may be made at the addresses below, and would be most helpful if submitted within thirty days of the publication of this notice. Based on the comments received and preliminary analysis, the Responsible Official has determined that an environmental impact statement will be prepared for this project. The draft environmental impact statement is expected in May 2007 and the final environmental impact statement is expected September 2007.

ADDRESSES: Send written comments and suggestions concerning this proposal to Mark Booth, District Ranger, Powder River Ranger District, Bighorn National Forest, 1415 Fort Street, Buffalo, Wyoming 82834.

FOR FURTHER INFORMATION CONTACT: Direct questions to Bernie Bornong, Interdisciplinary Team Leader, Bighorn National Forest, 2013 Eastside 2nd Street, phone (307) 674–2600.

SUPPLEMENTARY INFORMATION: The allotments are located approximately 50 miles, by road, northeast of Worland, Wyoming in the Bighorn River drainage. National Forest System land within the Bighorn National Forest will be considered in the proposal. The purpose of the analysis is to determine if livestock grazing will continue on the analysis area. If the decision is to continue livestock grazing, then updated management strategies

outlining how livestock will be grazed will be developed to assure implementation of Forest Plan management direction. The analysis will consider actions that continue to improve trends in vegetation, watershed conditions, and ecological sustainability relative to livestock grazing within the allotments. Management actions are proposed to be implemented beginning in the year 2008.

The Bighorn National Forest Land and Resource Management Plan (Forest Plan) identifies livestock grazing as an appropriate use and makes initial determinations for lands capable and suitable for grazing by domestic livestock.

Purpose and Need for Action: The purpose of this project is to determine if livestock grazing will continue to be authorized on the Battle Park and Mistymoon allotments, and if it is to continue, how to best utilize adaptive management strategies to maintain or achieve desired conditions and meet forest plan objectives. Livestock grazing is currently occurring on the Battle Park allotment under the existing allotment management plan (AMP) and through direction provided in the Annual Operating Instructions. The Mistymoon allotment is currently vacant. Continuation of livestock grazing will require reviewing existing management strategies and, if necessary, updating them to implement forest plan direction and meet Section 504 of Public Law 104–19 (Rescission Bill, signed 7/27/95). The results of this analysis may require modifying term grazing permits and AMPs. Modifications will be documented in updated AMPs for the allotments.

Existing conditions in the analysis area present opportunities for additional activities. An additional purpose of this project is to maintain or move toward desired conditions for sagebrush/grassland communities; specifically, to maintain a mosaic of vegetation composition and structure that emulates, or moves toward, natural processes. The need to provide a mosaic of sagebrush cover densities has been identified in the project area.

Proposed Action: The proposed action is to continue livestock grazing using adaptive management strategies to meet or move toward Forest Plan and allotment-specific desired conditions. This includes changing livestock management strategies, constructing additional improvements (fences and water developments), and treating sagebrush. The Mistymoon allotment is currently vacant, and the proposed action is to combine the portion of this allotment that is determined to be suitable for cattle grazing with the Battle Park allotment.

Possible Alternatives: Two additional alternatives have been identified to date: (a) Remove livestock grazing from these allotments, and (b) Continue current management strategies.

Responsible Official: Mark Booth, District Ranger, Powder River Ranger District, Bighorn National Forest, 1415 Fort Street, Buffalo, Wyoming 82834.

Nature of Decision to be Made: The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will determine whether or not to authorize livestock grazing on all, part, or none of the allotments, and if so, what adaptive management design criteria, adaptive options, and monitoring will be implemented so as to meet or move toward the desired conditions in the defined timeframe.

Scoping Process: Formal scoping for this project occurred in August 2004. Since then, there has been correspondence and several meetings with individuals, permittees, State Agencies, environmental groups, and other interested people.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear *Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 14, 2007.

Mark Booth,

Powder River District Ranger.

[FR Doc. 07–1431 Filed 3–23–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest, California, Willow Forest Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent.

SUMMARY: This notice cancels the Notice of Intent to prepare an Environmental Impact Statement for the Willow Forest Recovery Project on the Lassen National Forest, published in the **Federal Register** on May 23, 2006, (Volume 71, Number 99, page 29612).

ADDRESSES: Almanor District Ranger, Lassen National Forest, P.O. Box 767, Chester, CA 96020.

FOR FURTHER INFORMATION CONTACT: Matt Cerney, Interdisciplinary Team Leader may be contacted by phone at (530) 258–2141.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement for the Willow Forest Recovery Project is canceled due to changes in the Forest's priorities.

Dated: March 1, 2007.

Laurie Tippin,

Forest Supervisor.

[FR Doc. 07–1457 Filed 3–23–07; 8:45 am]

BILLING CODE 5410–99–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: The Eastern Region Recreation Resource Advisory Committee will hold its first meeting in Milwaukee, WI. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on the Allegheny, Chequamegon-Nicolet, Chippewa, Hiawatha, Hoosier, Huron-Manistee, Monongahela, Ottawa, Shawnee, Superior, and Wayne National Forests and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004. A large part of this first meeting will be dedicated to committee orientation and organizational matters such as election of chair, and crafting of by-laws. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Marcia Heymen at 626 E. Wisconsin Ave., Milwaukee, WI 53202 no later than 10 days prior to the meeting.

DATES: The meeting will be held April 24 and 25, 2007, from 8:30 a.m.–4:30 p.m.

ADDRESSES: The meeting will be at The Comfort Inn & Suites, 916 E. State St., Milwaukee, WI 53202. Send written comments to Cheryl Chatham, Designated Federal Official for the Eastern Region Recreation RAC, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Cheryl Chatham, Designated Federal Official, U.S. Forest Service, P.O. 1270, Hot Springs, AR 71902.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by April 10, 2007, will have the opportunity to address the Committee at the meeting.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: March 20, 2007.

Cheryl G. Chatham,

Designated Federal Official, Eastern Region.

[FR Doc. 07–1456 Filed 3–23–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

List of Petitions Received by EDA for Certification of Eligibility to Apply for Trade Adjustment Assistance for the Period February 21, 2007 Through March 20, 2007

Firm	Address	Date petition accepted	Product
Prier Products, Inc	*4515 E 139th St, Grandview, MO 64030*	2/21/2007	*Freezeless hydrants and related plumbing valves.*
George B. Woodcock & Co., Inc	*9667 Canoga Ave., Chatsworth, CA 91311.*	3/1/2007	*Soft manufacturing and assembly of packaging products.*
Marcal Medical, Inc	*1114 Benfield Blvd., Suite H, Millersville, MD 21108.*	2/23/2007	*Specialty medical device instruments.*
BSI International LLC dba Rainbow Manufacturing.	*2474 Manana, Suite 120, Dallas, TX 75220.*	3/2/2007	*Unisex scrubs for medical use.*
Engineered Plastic Components, Inc	*1408 Zimmerman Drive South, Grinnell, IA 50112.*	2/23/2007	*Custom injection molded plastic products.*
Rich Paper Box Company and Subsidiaries aka The Rich Group, LLC.	*75 Pocasset Street, Johnston, RI 02919*	3/1/2007	*Cardboard and paper boxes and displays for various products.*
Stewart Acquisition, LLC dba CIMA Plastics Group.	*2146 Enterprise Parkway, Twinsburg, OH 44087.*	3/1/2007	*Non-automotive plastic injection-molded parts.*
Central Minnestoa Tool & Stamping, Inc	*408 13th Ave. NW, Little Falls, MN 56345*	3/1/2007	*Machine tooling dies and molds used to fabricate stamped metal components.*
Ardisam, Inc,	*14690 Elm Street, Cumberland, WI 54829.*	3/1/2007	*Outdoor hunting and sporting goods such as metal tree stands.*
Bradford Veneer & Panel Co., Inc	1143 *Clark Pond Road, North Haverhill, NH 03774.*	3/7/2007	*Custom wood products, veneers, pre-finished bedrails, machined grooved panels, and custom built plywood.*
CEPS, Inc.	*4 Technology Drive, West Lebanon, NH 03784.*	3/7/2007	*Plastic injection-molding manufacturer.*
Rijline Metals Arts, Inc	*P.O. Box 628, Gellatin Gateway, MT 59730.*	3/8/2007	*Ornamental items of metal.*

Firm	Address	Date petition accepted	Product
Excal, Inc,	*1 Excal Way, Mills, WY 82644*	3/13/2007	*Brass fittings.*
Astra Products, LTD	*7154 State Route 80, PO Box 848, Ravenna, OH 44266.*	3/13/2007	*PVC extrusions of vertical blinds.*
Safety Components Fabric Technologies, Inc.	*30 Emory Street, Greenville, SC 29605*	3/12/2007	*Automobile airbag restraint fabrics and non-automotive technical applications.*
A–1 Pattern & Foundry	*4860 Van Gordon Street, Wheat Ridge, CO 80033.*	3/16/2007	*Aluminum castings.*
Regency Thermographics	*725 Clayton Ave, Waynesboro, PA 17268*	3/16/2007	*Business stationary and other printed products.*

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 20, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E7–5467 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Extension of Preliminary Results for Tenth Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 26, 2007.

SUMMARY: The Department of Commerce (the ''Department'') is extending the preliminary results of the tenth new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') by an additional 120 days to July 19, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2006, the Department initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, covering the period of review, February 1, 2006, to July 31, 2006 (''POR''), on Guangxi Jisheng Foods, Inc. (''Jisheng''). *See Notice of Initiation of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 71 FR 56954 (September 28, 2006).

On December 14, 2006, the Department requested comments from interested parties regarding surrogate country selection and publicly available information for valuing factors of production. On February 5, 2007, Jisheng submitted comments on publicly available information for valuing factors of production.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and section 351.214(i)(1) of the Department's regulations, the Department shall issue preliminary results in a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act further provides, however, that the Department may extend that 180-day period to 300 days if it determines that this review is extraordinarily complicated.

The Department finds that this review is extraordinarily complicated and that it is not practicable to complete this new shipper review within the foregoing time period. Specifically, the Department requires additional time to analyze all questionnaire responses and has determined to conduct verification of the responses submitted, as well as to examine whether Jisheng's U.S. sale was made on a *bona fide* basis. Accordingly, the Department finds that additional time is needed in order to complete these preliminary results.

Section 751(a)(2)(B) of the Act and section 351.214(i)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 300 days from the date of initiation of the new shipper review. As mentioned, this review was initiated on September 28, 2006. For the reasons noted above, we are extending the time for the completion of the preliminary results of this review to 300 days, *i.e.*, until no later than July 19, 2007. The deadline for the final results of the administrative review continues to be 90 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 351.214(i)(2) of the Department's regulations and section 751(a)(2)(B)(iv) of the Act.

Dated: March 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–5499 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Pure Magnesium in Granular Form from the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on pure magnesium in granular form from the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the

United States, the Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler or Juanita Chen, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4340 and (202) 482–1904, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2006, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on pure magnesium in granular form from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1]

As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2] On March 1, 2007, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

There is an existing antidumping duty order on pure magnesium from the PRC.[4] The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above. Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra- pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight that do not conform to an ''ASTM Specification for Magnesium Alloy''[5] (generally referred to as ''off–specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non–magnesium granular materials to make magnesium–based reagent mixtures. The non–magnesium granular materials of which the Department is aware used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al2O3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium–based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties. The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on pure magnesium in granular form from the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of this order is the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this antidumping order not later than February 2012.

This five-year (sunset) review and this continuation notice are in accordance with section 751(c) of the Act and published pursuant to 777(i) of the Act.

Dated: March 15, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–5501 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Initiation of Five-Year (Sunset'') Reviews*, 71 FR 57921, and Pure Magnesium from China, 71 FR 58001 (October 2, 2006).

[2] *See Pure Magnesium in Granular Form from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 72 FR 5417 (February 6, 2007).

[3] *See Pure Magnesium from China*, 72 FR 10258 (March 7, 2007), USITC Publication 3908 (March 2007) (Investigation No. 731-TA-895 (Review)).

[4] *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995).

[5] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Jill Pollack, 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) 482–4593.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2006, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on Stainless Steel Sheet and Strip in Coils from Taiwan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (Aug. 30, 2006). The period of review is July 1, 2005, through June 30, 2006, and the preliminary results are currently due no later than April 2, 2007. The review covers 12

producers/exporters of the subject merchandise to the United States.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because we require additional time to analyze the respondent's cost of production response and issue supplemental questionnaires. Therefore, we have fully extended the deadline for completing the preliminary results until July 31, 2007, which is 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–5502 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting the nineteenth administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (''TRBs''), from the People's Republic of China (''PRC''), covering the period June 1, 2005, through May 31, 2006. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2005, through May 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 32032 (June 2, 2006). On June 30, 2006, The Timken Company (''Timken'' or ''Petitioner'') requested that the Department conduct an administrative review of the antidumping duty order covering TRBs from the PRC for entries of subject merchandise produced and/or exported by Chin Jun Industrial Ltd. (''Chin Jun''), and Peer Bearing Company - Changshan (''CPZ''). Additionally, on June 30, 2006, Hebei Longsheng Metals & Minerals Co., Ltd. (''Hebei Longsheng'') and Yantai Timken Company Limited (''Yantai'') independently requested that the Department conduct an administrative review of their respective sales. Further, on June 30, 2006, Koyo Corporation of U.S.A. (''Koyo''), a U.S. producer of TRBs, requested that the Department conduct an administrative review of Yantai's sales. On July 27, 2006, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the period June 1, 2005, through May 31, 2006, for Chin Jun, CPZ, Hebei Longsheng, and Yantai. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 42626 (July 27, 2006) (''*Initiation Notice*'').

On August 9, 2006, the Department issued its antidumping duty questionnaire to all of the above respondents.

On August 28, 2006, Chin Jun reported to the Department that it was a dormant company during the POR and had no sales of subject merchandise. On September 6, 2006, Yantai withdrew its request for review, stating that it did not intend to participate further in the review because of the limited value of its exports. Also on September 6, 2006, Hebei Longsheng submitted its Section A response to the Department's original questionnaire. On September 8, 2006, CPZ reported to the Department that it did not intend to submit questionnaire responses because of the limited value of its exports. On September 29, 2006, Hebei Longsheng withdrew its request for review, pursuant to 19 CFR 351.213(d)(1).

Notice of Intent to Rescind in Part and Partial Rescission

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or in part, with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explains this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27317 (May 19, 1997) (''Preamble''); *see also Stainless Steel Plate in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). Because Chin Jun reported to the Department that it was a dormant company during the POR and it had no sales of subject merchandise, and we have received no evidence that Chin Jun had any shipments to the United States of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily rescinds this review as to Chin Jun.

The Department's regulations at 19 CFR 351.213(d)(1) further provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of

initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Hebei Longsheng withdrew its request for review within the 90-day time limit and no other party requested a review with respect to Hebei Longsheng. Therefore, we are rescinding this review as to Hebei Longsheng.

Yantai also withdrew its request for review within the 90-day time frame discussed above; however, another interested party (*i.e.*, Koyo) also requested a review of Yantai. Therefore, we are not rescinding this review as to Yantai.

Period of Review

The POR is June 1, 2005, through May 31, 2006.

Scope of the Order

Merchandise covered by this order is TRBs from the PRC; flange, take–up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Application of Facts Available

Section 776(a)(1) and (2) of the Tariff Act of 1930 (''the Act'') provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (''SAA''), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Application of Total Adverse Facts Available

CPZ

As discussed above, the Department initiated an administrative review of CPZ's exports of merchandise covered by the antidumping duty order on TRBs from the PRC. *See Initiation Notice*. On August 9, 2006, the Department issued its original questionnaire to CPZ. On September 8, 2006, CPZ reported to the Department that it did not intend to submit questionnaire responses because of the limited value of its exports. We find that because CPZ failed to submit questionnaire responses, CPZ has not demonstrated its entitlement to a separate rate and is, therefore, subject to the PRC–wide rate.

Yantai

On September 6, 2006, Yantai reported to the Department it was withdrawing its request for review and it did not intend to further participate in the review because of the limited value of its exports. However, because Koyo also requested an administrative review of Yantai, the Department could not rescind as to Yantai. Because Yantai failed to submit questionnaire responses, the Department was unable to conduct a separate–rate analysis of Yantai. Accordingly, the Department finds that Yantai has not demonstrated its entitlement to a separate rate and is, therefore, subject to the PRC–wide rate.

The PRC–Wide Entity

Because CPZ and Yantai did not respond to the Department's questionnaire, and therefore did not demonstrate their eligibility for separate–rate status, the Department is treating these PRC producers/exporters as part of the PRC–wide entity.

Additionally, because we have determined that the companies named above are part of the PRC–wide entity, the PRC–wide entity is now under review. Pursuant to section 776(a) of the Act, we further find that because the PRC–wide entity (including the companies discussed above) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC–wide entity using facts otherwise available on the record. Additionally, because these parties failed to respond to our requests for information, we find that an adverse inference is appropriate.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available (''AFA''), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In administrative reviews, the Department normally selects, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003); *see also Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 57991 (February 7, 2002).

The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''Federal Circuit'') have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (''Rhone Poulenc''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004)(upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an less than fair value investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 2005 Ct. Int'l. Trade 23 *23; Slip Op. 05–22 (February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 890, *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *see also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F. 2d at 1190.

Consistent with the Department's practice and the purposes of section 776(b) of the Act, as AFA, we are assigning the rate of 60.95 percent to the PRC–wide entity, which is the highest rate calculated in any segment of the proceeding. This rate was calculated for Premier Bearing and Equipment Ltd. (''Premier'') in the final results of redetermination on remand from the CIT for the seventh administrative review of TRBs covering the POR of June 1, 1993, to May 31, 1994. *Peer Bearing Co. v. United States*, Slip op. 02–53 (CIT 2002); as upheld by the Federal Circuit in 78 Fed. Appx. 718 (Fed. Cir. 2003); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the PRC: Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 79902, (Dec. 31, 2002) (''*TRBs Amended Final*''), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the PRC: Amended Final Results of Antidumping Duty Administrative Review*, 69 FR 10423 (March 5, 2004) (''*TRBs Amended Final 2*''). The Department preliminarily determines that this information is the most appropriate, from the available sources, to effectuate the purposes of AFA. The Department's reliance on secondary information to determine an AFA rate is subject to the requirement to corroborate. *See* section 776(c) of the Act and the ''*Corroboration of Secondary Information*'' section below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870. The *SAA* states that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value information must be reliable and relevant. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). The *SAA* also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined by the calculation of the margin for Premier, pursuant to the final results of redetermination on remand from the CIT, for the seventh administrative review of TRBs (covering the period June 1, 1993, to May 31, 1994). See TRBs Amended Final and TRBs Amended Final 2. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. *See e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307–41308 (July 11, 2003). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information contained in the 1993–1994 review is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where

circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated). To assess the relevancy of the rate used, the Department has no record evidence to call into question Premier's margins. Further, in our recently completed final results for the 2003–2004 review of TRB's, we also applied the 60.95 percent rate to the PRC–wide entity as AFA. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the PRC: Amended Final Results of Administrative Review*, 71 FR 9521 (February 24, 2006). Therefore, we determine that the rate from the 1993–1994 review continues to be relevant for use in this administrative review.

As the 1993–1994 margin is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding, 60.95 percent, meets the corroboration criteria established in section 776(c) that secondary information have probative value. As a result, the Department determines that the 1993–1994 margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity as AFA.

Because these are preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC–wide entity. *See Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margins exist for the period June 1, 2005, through May 31, 2006:

TRBs FROM THE PRC

Producer/Exporter	Weighted–Average Margin (Percent)
PRC–Wide Entity*	60.95

* Including CPZ and Yantai.

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication of this notice. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this administrative review. In this review, if these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(1)(C) and (a)(2)(C) of the Act: (1) for CPZ and Yantai, the cash deposit rate will be that established in the final results of this review; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 60.95 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 double antidumping duties.

The Department is issuing and publishing these preliminary results of administrative review in accordance with sections 751(a) and 777(i)(1) of the Act, and 19 CFR 351.221(b) and 351.214(h).

Dated: March 1, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5500 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 06–00003.

SUMMARY: On March 16, 2007, the U.S. Department of Commerce issued an Export Trade Certificate of Review to the American Sugar Alliance (''ASA''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export

Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Sugar and syrups of U.S. origin, as defined in Chapter Four (Rules of Origin) of the North American Free Trade Agreement, (''U.S.-origin sugar'') in any of the following categories:

H.S. Code	Description
1701.11.01	Sugar, with a dry sucrose content that has polarization of 99.4 but not exceeding 99.5 degrees.
1701.11.02	Sugar, with a dry sucrose content that has polarization of 96 but not exceeding 99.4 degrees.
1701.11.03	Sugar, with a dry sucrose content that has polarization of 96 degrees.
1701.12.01	Sugar, with a dry sucrose content that has polarization of 99.4 but not exceeding 99.5 degrees.
1701.12.02	Sugar, with a dry sucrose content that has polarization of 96 but not exceeding 99.4 degrees.
1701.12.03	Sugar, with a dry sucrose content that has polarization of 96 degrees.
1701.91.01	Containing added flavoring or coloring matter.
1701.99.01	Sugar, with a dry sucrose content that has polarization of 99.5 but not exceeding 99.7 degrees.
1701.99.02	Sugar, with a dry sucrose content that has polarization of 99.7 but not exceeding 99.9 degrees.
1701.99.99	Others.
1701.90.01	Refined liquid sugar and inverted sugar.
1806.10.01	With a sugar content weighting not less than 90%.
2106.90.05	Flavored syrups or with added coloring matters (except syrups which have a sugar content less than 90%).

Export Markets

Mexico.

Export Trade Activities and Methods of Operation

Purpose

The ASA will allocate Certificates of Prior Approval (''CPAs'') through which Mexico will permit duty-free entry of U.S.-origin sugar into Mexico under the tariff-rate quota (''TRQ'') for U.S.-origin sugar through December 31, 2007, as set forth below.

The ASA will allocate CPAs to any sugar beet processor or cane sugar refiner in the United States that is listed as a Producer below.

CPA Administration

The ASA will allocate all CPAs at one time. In the event that any CPAs are returned to ASA for any reason, ASA will reallocate those CPAs among interested Producers. The allocation, and any reallocations, will be completed before December 16, 2007.

Certificate System

Under the procedures for the TRQ published on October 16, 2006 in the Mexican Diario Oficial, an importer in Mexico must file by December 15, 2007 with the Mexican Government a CPA issued by ASA to obtain a license to allow U.S.-origin sugar to enter into Mexico free of duty under the TRQ. The ASA will allocate CPAs among all Producers who express an interest in obtaining the CPAs based on each Producer's share of total U.S. sugar refining capacity in 2006, as reported to ASA. The ASA shall issue CPAs to such Producers.

CPAs issued by ASA shall be freely transferable by Producers. Transfers of CPAs after they are issued by ASA will be subject to the normal application of the antitrust laws.

Information Collection and Exchange

ASA may ask Producers individually for their production capacity figures for 2006 for the purposes of allocating the CPAs. Producers may supply that information to ASA, and ASA may allocate CPAs to Producers based on this information.

If production capacity information is collected by ASA, it will be collected and collated, and the allocations of CPAs will be made, by an employee or employees of ASA who are not employed by any member of the ASA Executive Committee or any Producer. As of the effective date of the Certificate, such employee or employees shall be the only persons who will have access to the collected production capacity information.

Any exchange of Producers' production capacity information or CPA allocation with other Producers, by Producers, ASA, any ASA member, or any other person is activity that is not protected under this Certificate.

Cooperation With the U.S. and Mexican Governments

The ASA will consult with the U.S. Government and the Government of Mexico when necessary and provide to them whatever information may be useful in order to facilitate cooperation between the governments concerning the implementation and operation of the CPA System. Furthermore, directly or through the U.S. Government, the ASA will endeavor to accommodate any information requests from the Government of Mexico (while protecting confidential information entrusted to the ASA), and will consult with the Government of Mexico as appropriate. All such information and consultations shall be subject to the provision on Confidential Information (above) and the Terms and Conditions (below).

Members (Within the Meaning of Section 325.(1) of the Regulations)

Members (in addition to ASA):

ASA Executive Committee (American Sugarbeet Growers Association, American Sugar Cane League, Florida Sugar Cane League, Inc., Gay & Robinson, Inc., Hawaiian Commercial & Sugar Co., Rio Grande Valley Sugar Growers Inc., Sugar Cane Growers Cooperative of Florida, U.S. Beet Sugar Association), and

Producers (Amalgamated Sugar Company LLC, American Sugar Refining Inc., American Crystal Sugar Company and Sidney Sugars (a subsidiary of American Crystal Sugar Co.), Florida

Crystals Corporation, Hawaiian Commercial & Sugar Company, Imperial Sugar Company, Michigan Sugar Company, Minn-Dak Farmers Cooperative, Southern Minnesota Beet Sugar Cooperative and Spreckels Sugar Company (a subsidiary of Southern Minnesota Beet Sugar Cooperative), U.S. Sugar Corporation, Western Sugar Cooperative and Wyoming Sugar Company LLC).

Protection Provided by Certificate of Review

This Certificate protects the ASA, its Executive Committee, the Producers and the directors, officers, employees and representatives acting on behalf of the ASA, the ASA Executive Committee and the Producers from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate of Review and carried out during its effective period in compliance with its terms and conditions.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither ASA, the ASA Executive Committee, any Producer nor any neutral third-party shall intentionally disclose, directly or indirectly, to any Member (including parent companies, subsidiaries, or other entities related to any Member) any information regarding any other Member's costs, production, inventories, domestic prices, domestic sales, domestic customers, domestic production capacity, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. If ASA determines that the collection or disclosure of any non-public, company-specific information is necessary for the allocation of CPAs to Producers, ASA must seek an amendment of this Certificate to add such export conduct to this Certificate.

3. ASA, the ASA Executive Committee and the Producers will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate continue to comply with the standards of section 303(a) of the Act.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked, as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits the ASA, the ASA Executive Committee and the Producers from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to ASA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of ASA, the ASA Executive Committee or the Producers or (b) the legality of such business plans of ASA, the ASA Executive Committee or the Producers under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and the Regulations, this Certificate of Review is hereby issued to the American Sugar Alliance.

The effective date of the Certificate is March 16, 2007. A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 20, 2007.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–5498 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Textile and Apparel Products from Vietnam: Import Monitoring Program; Public Hearing

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Public Hearing – Import Monitoring of Textile and Apparel Products from Vietnam.

SUMMARY: As stated in its January 23, 2007 **Federal Register** notice requesting public comment (72 FR 2860), the Department of Commerce (the Department) will hold a public hearing on its import monitoring program covering textile and apparel products from Vietnam. The hearing will be held on April 24, 2007 in Washington, D.C. Further details regarding the location, time and requirements for speaking at the hearing are provided below.

DATES: The hearing will be held on April 24, 2007 starting at 9 AM in the auditorium at the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC.

Participation:

The hearing is open to the public. There are no prerequisites or conditions on participating at the hearing. All are welcome to speak at the hearing subject to the guidelines outlined in this notice. If you plan to attend the hearing, please notify the Department by no later than April 9, 2007, and if you wish to speak at the hearing, please indicate that as well. This can be done in writing or electronically at *vietnam–texapp-hearing@mail.doc.gov*.

There are no constraints on subject matter relating to the Department's Vietnam textile and apparel import monitoring program; however, speakers should be aware that these hearings will be open to the public and may be videotaped for later viewing on the Vietnam textile and apparel import monitoring website; there will be no provisions for handling or protecting business proprietary information. In preparing their comments, parties may wish to review the Department's December 4, 2006, and January 23, 2007, **Federal Register** notices requesting public comment on the monitoring program and the comments received. This information and the monitored Vietnamese textile and apparel import data is available on the Vietnam textile and apparel import monitoring website at the following address: *http://*

ia.ita.doc.gov/download/vietnam–textile-monitoring/vtm–index.html.

Oral Comments:

Individual presentations will be limited to five minutes to allow for possible questions from the Chair and the panel. Anyone requiring additional time for their presentation must seek an extension of the time limit at the time of their notification to the Department. Additional time may be granted as time and the number of participants permits. Should an extension of the time limit be granted, speakers must submit a copy of their comments in writing or electronically by April 20, 2007.

Written Comments:

Written comments, though strongly encouraged, are not required for those making presentations within the five minute time limit. For those seeking an extension of the five minute time limit, a copy of their comments must be submitted in writing or electronically by April 20, 2007. Written comments are limited to 15 pages. Written comments will be made available on the Vietnam textile and apparel import monitoring website at the following address: *http://ia.ita.doc.gov/download/vietnam–textile-monitoring/vtm–index.html*.

ADDRESSES: Comments can either be submitted in writing or electronically. Persons wishing to comment in writing should file, by the date specified above, a signed original, and four copies of each set of comments. Written comments should be addressed to David Spooner, Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington D.C. 20230. Electronic comments should be submitted to *vietnam–texapp-hearing@mail.doc.gov*.

All comments will be available for public inspection at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department will not accept nor consider comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. In addition, all comments will be made available to the public in Portable Document Format (PDF) on the Internet at Import Administration's Vietnam import monitoring webpage: *http://ia.ita.doc.gov/download/vietnam–textile-monitoring/vtm–index.html*. To the extent possible, all comments will be posted within 48 hours. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e–mail address: *webmaster–support@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill at (202) 482–3791.

Dated: March 21, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–5569 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitation of Duty-free Imports of Apparel Articles Assembled in Haiti under the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act (HOPE)

March 22, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the 12-Month Cap on Duty-Free Benefits.

EFFECTIVE DATE: March 26, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2582.

SUPPLEMENTARY INFORMATION:

Authority: The Caribbean Basin Recovery Act (CBERA), as amended by the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act of 2006 (collectively HOPE), Title V of the Tax Relief and Health Care Act of 2006.

HOPE provides for duty-free treatment for certain apparel articles imported directly from Haiti. Section 213A (b)(2) of HOPE provides duty- free treatment for apparel articles wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, if the sum of the cost or value of materials produced in Haiti or one or more countries, as described in HOPE, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more countries, as described in HOPE, or any combination thereof, is not less than an applicable percentage of the declared customs value of such apparel articles, subject to quantitative limitation.

Section 213A (a)(1)(B) of HOPE provides that the initial applicable one-year period of quantitative limitation means the one-year period beginning on the date of the enactment of HOPE, beginning on December 20, 2006. Section 213A (b)(3) of HOPE provides that the quantitative limitations for qualifying apparel imported from Haiti under this provision for the twelve-month period beginning on December 20, 2006 will be an amount not to exceed 1 percent of the aggregate square meter equivalent of all apparel articles imported into the United States in the most recent 12-month period for which data are available. For purposes of this notice, the most recent 12-month period for which data are available as of December 20, 2006 was the 12-month period ending on October 31, 2006.

For the initial applicable one-year period, beginning on December 20, 2006 and extending through December 19, 2007, the quantity of imports eligible for preferential treatment under this provision is 238,785,275 square meters equivalent. Section 213A (b)(3) of HOPE provides that these quantities will be recalculated for each subsequent 12-month period. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meters equivalent of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–5566 Filed 3–23–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 25, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on March 6, 2007, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 16, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.60 CA

SYSTEM NAME:

DLA Complaint Program Records (March 6, 1998, 63 FR 11226).

CHANGES:

SYSTEM IDENTIFIER:

Delete ''CA'' from entry.

SYSTEM NAME:

Delete entry and replace with ''Defense Logistics Agency Hotline Program Records.''

SYSTEM LOCATION:

Delete entry and replace with ''Director, DLA Criminal Investigations Activity, Headquarters, Defense Logistics Agency, *ATTN:* DI, 8725 John J. Kingman Road, Stop 2358, Fort Belvoir, VA 22060–6221, and at the offices of the designated Hotline Points of Contact of DLA Field Activities or DLA Headquarters Staff Directorates.

Official mailing addresses may be obtained from the System Manager below.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Complainants, subjects, witnesses, and contractor employees.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records resulting from the receipt of a DOD/DLA Hotlines and resulting inquiries including the date of the complaint, the Hotline control number; the name of the complainant, the name of the suspect(s), and the actual allegations; Hotline documents from components transmitting the DOD/DLA Hotline Reports, which normally contain the name of the examining official(s) assigned to conduct the inquiry; and background information regarding the inquiry itself, such as the scope of the inquiry, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the examining official's findings, conclusions, and recommendations; and the disposition of the inquiry; and internal DLA Hotline forms documenting review and analysis of Hotline Reports.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To conduct inquiries of reported instances of alleged/suspected fraud, waste, abuse, or mismanagement.

To compile statistical information to disseminate on an as needed basis to HQ DLA, DLA Field Activities, and the Defense Hotline, DOD.

To provide a record of hotline disposition. Hotlines appearing to involve criminal wrongdoing will be referred to the Defense Criminal Investigative Service or other criminal investigative units of DOD Components.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the allegations for investigative, corrective action, debarment, or reporting purposes.

To Government contractors employing individuals who are subjects of a hotline.

To DLA contractors or vendors when the Hotline pertains to a person they employ or to a product or service they provide to DOD when disclosure is necessary to accomplish or support corrective action.

The DOD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by name of complainant, name of subject/offender, hotline topic, inquiry number, witness, National Stock Number, Contract Number, and contractor name and contractor employee name.''

SAFEGUARDS:

Delete entry and replace with ''Physical entry is restricted by the use of guards, locks, and administrative procedures. System is password controlled with system-generated, forced password-change protocols or also equipped with 'Smart Card' technology that requires the insertion of an embedded identification card and entry of a PIN. In addition, computer screens lock after a preset period of inactivity with re-entry controlled by passwording. The DLA Hotline Database is also password controlled. Access to the database is limited to those DLA Hotline Program personnel who require the records in the performance of their official duties. Employees are periodically briefed on their responsibilities regarding privacy information. All individuals granted access to this system of records is to have taken Privacy Act training.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Disposition pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent.''

SYSTEM MANAGER AND ADDRESS:

Delete entry and replace with ''Director, DLA Criminal Investigations Activity, Headquarters, Defense Logistics Agency, *ATTN:* DI, 8725 John J. Kingman Road, Stop 2358, Fort Belvoir, VA 22060–6221.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information is provided by the Defense Hotline, subjects/offenders, complainants, witnesses, investigators, examining officials, personnel interviewed, and the Federal/State/DOD/DLA Hotline Program Offices.''

* * * * *

S500.60

SYSTEM NAME:

Defense Logistics Agency Hotline Program Records.

SYSTEM LOCATION:

Director, DLA Criminal Investigations Activity, Headquarters, Defense Logistics Agency, *ATTN:* DI, 8725 John J. Kingman Road, Stop 2358, Fort Belvoir, VA 22060–6221, and at the offices of the designated Hotline Points of Contact of DLA Field Activities or DLA Headquarters Staff Directorates. Official mailing addresses may be obtained from the System Manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: COMPLAINANTS, SUBJECTS, WITNESSES, AND CONTRACTOR EMPLOYEES.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from the receipt of a DOD/DLA Hotline and resulting inquiries including the date of the complaint, the Hotline control number; the name of the complainant, the name of the suspect(s), and the actual allegations; Hotline documents from components transmitting the DOD/DLA Hotline Reports, which normally contain the name of the examining official(s) assigned to conduct the inquiry; and background information regarding the inquiry itself, such as the scope of the inquiry, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the examining official's findings, conclusions, and recommendations; and the disposition of the inquiry; and internal DLA Hotline forms documenting review and analysis of Hotline Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 5 U.S.C., Appendix 3, Inspector General Act of 1978, as amended; DOD Directive 5106.1, Inspector General of the Department of Defense; DOD Directive 7050.1, Defense Hotline Program; DOD Instruction 7050.7, Defense Hotline Procedures; DOD Instruction 7050.8, Defense Hotline Quality Assurance Review (QAR) Program; DOD Directive 5505.6, Investigations of Allegations Against Senior Officials of the Department of Defense; and The DLA One Book Process Chapter, DLA Hotline Program.

PURPOSE(S):

To conduct inquiries of reported instances of alleged/suspected fraud, waste, abuse, or mismanagement; to compile statistical information to disseminate on an as needed basis to HQ DLA, DLA Field Activities, and the Defense Hotline, DOD; and to provide a record of hotline disposition. Hotlines appearing to involve criminal wrongdoing will be referred to the Defense Criminal Investigative Service or other criminal investigative units of DOD Components.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the allegations for investigative, corrective action, debarment, or reporting purposes.

To Government contractors employing individuals who are subjects of a hotline.

To DLA contractors or vendors when the Hotline pertains to a person they employ or to a product or service they provide to DOD when disclosure is necessary to accomplish or support corrective action.

The DOD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be retained in either hard copy or electronic/image format.

RETRIEVABILITY:

Records are retrieved by name of complainant, name of subject/offender, hotline topic, inquiry number, witness, National Stock Number, Contract Number, and contractor name and contractor employee name.

SAFEGUARDS:

Physical entry is restricted by the use of guards, locks, and administrative procedures. System is password controlled with system-generated, forced password-change protocols or also equipped with ''Smart Card'' technology that requires the insertion of an embedded identification card and entry of a PIN. In addition, computer screens lock after a preset period of inactivity with re-entry controlled by passwording. The DLA Hotline Database is also password controlled. Access to the database is limited to those DLA Hotline Program personnel who require the records in the performance of their official duties. Employees are periodically briefed on their responsibilities regarding privacy information. All individuals granted access to this system of records is to have taken Privacy Act training.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent.

SYSTEM MANAGER AND ADDRESS:

Director, DLA Criminal Investigations Activity, Headquarters, Defense Logistics Agency, *ATTN:* DI, 8725 John J. Kingman Road, Stop 2358, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Individuals are required to provide their full name, address, and either a notarized signature or a signed and dated unsworn declaration, in accordance with 28 U.S.C. 1746, stating under penalty of perjury under U.S. law that the information contained in the request, including their identity, is true and correct.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Individuals are required to provide their full name, address, and either a notarized signature or a signed and dated unsworn declaration, in accordance with 28 U.S.C. 1746, stating under penalty of perjury under U.S. law that the information contained in the request for access, including their identity, is true and correct.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial Agency determinations are contained in 32 CFR part 323 or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency,

ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the Defense Hotline, subjects/offenders, complainants, witnesses, investigators, examining officials, personnel interviewed, and the Federal/State/DOD/DLA Hotline Program Offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 323. For more information, contact the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

[FR Doc. E7–5232 Filed 3–23–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors; Notice of Meeting

ACTION: Notice of meeting of Air University Board of Visitors.

SUMMARY: The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs. Discussions will include overall university status, degree-granting authority, reaffirmation preparations, and undergraduate education updates.

DATES: The Air University Board of Visitors will hold an open meeting on 16–17 April 2007. The first business session of each meeting will begin in the Air Force Personnel Center Conference Room, Randolph Air Force Base, Texas.

FOR FURTHER INFORMATION CONTACT: Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, at (334) 953–5159.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–5448 Filed 3–23–07; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, HQ USAF Scientific Advisory Board, DOD.

ACTION: Notice.

SUMMARY: The Air Force Scientific Advisory Board (SAB) will meet on 10 April 2007 at Air Intelligence Agency (AIA), Lackland Air Force Base, TX. The purpose of the meeting is to hold the SAB Spring quarterly meeting. The day will be spent in classified briefings and discussion with Air Intelligence Agency to learn about their roles and mission. Visits will also be made to various tenant units also at Lackland Air Force Base. Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) and (9)(B) of Title 5 United States Code.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kyle Gresham, Executive Director, Air Force Scientific Advisory Board, 1180 Air Force Pentagon, Washington, DC 20330–1040, (703) 697–4811.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–5447 Filed 3–23–07; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools

Overview Information; Grants for the Integration of Schools and Mental Health Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215M.

Dates:

Applications Available: March 26, 2007.

Deadline for Transmittal of Applications: May 15, 2007.

Deadline for Intergovernmental Review: July 18, 2007.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), and Indian tribes. Additional eligibility requirements are listed elsewhere in this notice under section I. Funding Opportunity Description, *Additional Requirements.*

Estimated Available Funds: $4,521,346. Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2007 and in FY 2008 from the list of unfunded applications from this competition.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Grants for the Integration of Schools and Mental Health Systems will provide funds to increase student access to high-quality mental health care by developing innovative approaches that link school systems with the local mental health system.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5541 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7269).

Absolute Priority: For FY 2007 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Increasing student access to quality mental health care by developing innovative approaches to link local

school systems with the local mental health system. A program funded under this absolute priority must include all of the following activities:

(1) Enhancing, improving, or developing collaborative efforts between school-based service systems and mental health service systems to provide, enhance, or improve prevention, diagnosis, and treatment services to students.

(2) Enhancing the availability of crisis intervention services, appropriate referrals for students potentially in need of mental health services, and ongoing mental health services.

(3) Providing training for the school personnel and mental health professionals who will participate in the program.

(4) Providing technical assistance and consultation to school systems and mental health agencies and families participating in the program.

(5) Providing linguistically appropriate and culturally competent services.

(6) Evaluating the effectiveness of the program in increasing student access to quality mental health services, and making recommendations to the Secretary about sustainability of the program.

Additional Requirements: The following requirements are from the Notice of Final Requirements for this program, published in the **Federal Register** on May 30, 2006 (71 FR 30780).

Requirement 1—Coordination of Activities

Recipients of a grant under the Grants for the Integration of Schools and Mental Health Systems program are required to coordinate project activities with projects funded under the Department of Health and Human Services'' Substance Abuse and Mental Health Services Administration's Mental Health Transformation State Infrastructure Grants (MHTSIG) program (CFDA 93.243), if a grantee's State receives a MHTSIG award. If a recipient of a grant under the Grants for the Integration of Schools and Mental Health Systems program has received or receives a grant under the Department of Education's Emergency Response and Crisis Management (ERCM) program (CFDA 84.184E), the recipient must coordinate mental health service activities under this grant with those planned under its ERCM grant. Projects funded by this program must complement, rather than duplicate, existing or ongoing efforts.

Requirement 2—Safe Schools/Healthy Students Recipients Excluded From Receiving Awards

Former or current recipients under the Safe Schools/Healthy Students program (CFDA 84.184L) are not eligible to receive a Grant for the Integration of Schools and Mental Health Systems. Recipients of Safe Schools/Healthy Students awards are responsible for completing a scope of work under that program that is very similar to the activities required under the Grants for the Integration of Schools and Mental Health Systems program. By restricting the applicant pool to eliminate former or current grantees under the Safe Schools/Healthy Students program, we will be able to focus Federal funds on entities that have not yet received Federal support to develop and implement strong linkages with other entities in their communities for the provision of mental health services to students.

Applicants may compete for both the Grants for the Integration of Schools and Mental Health Systems and Safe Schools/Healthy Students programs in the same year; if applicants are deemed eligible for funding in both grant competitions, the applicant will receive the larger and more comprehensive of the awards.

Requirement 3—Preliminary Interagency Agreement

Applicants for an award under the Grants for the Integration of Schools and Mental Health Systems program must develop and submit with their applications a preliminary interagency agreement (IAA). The IAA must contain the signatures of an authorized representative of at least (1) one or more State or local educational agencies or Indian tribes; (2) one or more juvenile justice authorities; and (3) one or more State or local public mental health agencies. This preliminary IAA would confirm the commitment of these partners to complete the work under the proposed project, if funded. If the applicant is funded, recipients will complete a final IAA as required by section 5541(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The final IAA must be completed and submitted to us, signed by all parties, no later than 12 months after the award date.

Applications that do not include the proposed preliminary IAA with all of the required signatures will be rejected and not be considered for funding.

Requirement 4—Inclusion of Parental Consent Considerations in Final IAA

The final Interagency Agreement (IAA) must include a description of policies and procedures that would ensure appropriate parental or caregiver consent for any planned services, pursuant to State or local laws or other requirements.

Requirement 5—Provision of Direct Services

Grant funds under this program must not be used to provide direct services to students.

Program Authority: 20 U.S.C. 7269.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final requirements for this program published in the **Federal Register** on May 30, 2006 (71 FR 30780).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,521,346. Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2007 and in FY 2008 from the list of unfunded applications from this competition.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, and Indian tribes. Additional eligibility requirements are listed elsewhere in this notice under section I. Funding Opportunity Description, *Additional Requirements*.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does have a supplement-not-supplant requirement in accordance with section 5541(i) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244.

If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215M.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program office: Dana Carr, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E332, Washington, DC 20202–6450. Telephone: (202) 260–0823 or by e-mail: *dana.carr@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, including the requirements for Interagency Agreements, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: March 26, 2007.

Deadline for Transmittal of Applications: May 15, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other 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**.

Deadline for Intergovernmental Review: July 18, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Grant funds under this program will not be used to provide direct services to students. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Grants for the Integration of Schools and Mental Health Systems Program, CFDA 215M, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the Grants for the Integration of Schools and Mental Health Systems 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 84.215, not 84.215M).

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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 program 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/Grantsgov SubmissionProcedures.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 submit your application in paper format.
- If you submit your application electronically, 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).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.215M), 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 84.215M), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.215M), 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.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the equitable distribution of grants among the geographical regions of the United States and among urban, suburban, and rural populations.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an interim progress report twelve months after the award date. This report should provide the most current performance and financial expenditure information, including baseline data.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Grants for the Integration of Schools and Mental Health Systems program:

a. The percentage of schools served by the grant that have comprehensive, detailed linkage protocols in place; and

b. The percentage of school personnel served by the grant who are trained to make appropriate referrals to mental health services.

These two measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures. The Secretary will also use this information to respond to the evaluation requirements concerning this program established in Section 5541(f) of the ESEA. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dana Carr, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E332, Washington, DC 20202–6450. Telephone: (202) 260–0823 or by e-mail: *dana.carr@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 21, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 07–1465 Filed 3–23–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 11, 2007; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main presentation topic will be an update on the Balance of Reservation Program and the Integrated Facility Disposition Project.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on March 20, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–5449 Filed 3–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires

that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 11, 2007; 5 p.m.

ADDRESSES: 7710 West Cheyenne Avenue, Conference Room #130, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kelly Snyder, Deputy Designated Federal Officer, P.O. Box 98518, Las Vegas, Nevada 89193. Phone: (702) 295–2836; E-mail: *snyderk@nv.doe.gov* or *ntscab@aol.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Briefing entitled ''Radiation Fundamentals''

2. Updates by the Board's working committees

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Kelly Snyder at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Kelly Snyder at the address listed above.

Issued at Washington, DC, on March 20, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–5450 Filed 3–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 19, 2007; 6 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

6 p.m. Call to Order, Introductions, Review of Agenda, and Approval of March Minutes
6:15 p.m. Deputy Designated Federal Officer's Comments
6:30 p.m. Federal Coordinator's Comments
6:35 p.m. Liaisons' Comments
6:45 p.m. Review of Action Items
6:50 p.m. Public Comments and Questions
7 p.m. Presentation: C–400 90% Design Report
7:30 p.m. Subcommittee Reports
- Water Disposition/Water Quality Subcommittee
- Community Outreach Subcommittee
- Long Range Strategy/Stewardship Subcommittee
- Executive Committee: EM SSAB Chairs' Meeting Review

7:45 p.m. Public Comments and Questions
7:55 p.m. Administrative Issues: Motions, Review of Work Plan, and Review of Next Agenda
8:05 p.m. Final Comments
8:15 p.m. Adjourn
Breaks Taken As Appropriate.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to Reinhard Knerr, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6825.

Issued at Washington, DC, on March 20, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–5452 Filed 3–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–46–000]

Morgan Stanley Capital Group Inc., Barclays Bank, Plc; Notice of Petition for Declaratory Order

March 20, 2007.

Take notice that on March 15, 2007, Morgan Stanley Capital Group Inc. and Barclays Bank, Plc (collectively ''Petitioners'') filed a petition of declaratory order concerning delivery obligations under certain wholesale power contracts in markets operated by Midwest Independent Transmission System Operator, Inc. (''MISO'') and PJM Interconnection, LLC (''PJM''). The Petitioners request the Commission to intervene as it has done in other markets that have transitioned to Locational

Marginal Pricing (''LMP'') or nodal pricing and resolve issues concerning the parties' delivery obligations under so-called ''Seller's Choice'' contracts. The requested determination is needed in light of the subsequent introduction of LMP into the MISO market and the integration of the former Alliance RTO Companies into the nodal pricing-based PJM market.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 16, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5456 Filed 3–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–49–000]

CAlifornians for Renewable Energy, Inc. (CARE), Complainant v. California Public Utilities Commission, California Department of Water Resources, Pacific Gas and Electric Company, City and County of San Francisco, Respondents; Notice of Complaint

March 20, 2007.

Take notice that on March 16, 2007, pursuant to section 205 of the Federal Power Act (FPA), CAlifornians for Renewable Energy, Inc. (complainant) filed a formal complaint against California Public Utilities Commission for authorizing on December 15, 2005, City and County of San Francisco to enter in a power purchase agreement with Pacific Gas and Electric Company by assuming contractual obligations of the California Department of Water Resources, in violation of the FPA under the ''filed rate doctrine''. The Complainant requests the contract be subject to the Commission's review as required under remand to the Commission on December 16, 2006 by the United State Court of Appeals for the Ninth Circuit in a pair of opinions, *Public Utility Dist. No. 1* v. *FERC, 471 F.3d 1053 (9th Cir. 2006)* and *Public Utility Commission of California* v. *FERC*, 474 F.3d 587 (9th Cir. Dec. 19, 2006).

The Complainant states that copies of this Complaint were served upon the Respondents and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 5, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5457 Filed 3–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 20, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–67–000.

Applicants: EBG Holdings LLC; Boston Generating LLC; Mystic I, LLC; Mystic Develop.m.ent, LLC; Fore River Develop.m.ent, LLC; K Road BG Management LLC; Astoria Generating Company Holdings, LLC; Astoria Generating Company, LP; Astoria Generating Company Acquisitions; Astoria Generating Company GP, LLC; U.S. Power Generating Company, LLC; New Astoria Generating Company Holdings; EBG Merger LLC; Astoria Merger LLC.

Description: EBG Holdings, LLC et al submit a joint application seeking approval of disposition of jurisdictional facilities and on 3/25/07 submit a verification of application.

Filed Date: 03/13/2007; 03/15/2007.

Accession Number: 20070319–0125; 20070319–0042.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 03, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–642–007.

Applicants: Cottonwood Energy Company LP.

Description: Cottonwood Energy Company, LP submits revisions to its

market based FERC Electric Tariff, Original Volume 1 pursuant to FERC's 2/16/06 Order.

Filed Date: 03/16/2007.

Accession Number: 20070320–0051.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER01–642–008; ER01–1335–009; ER01–1011–012.

Applicants: CottonWood Energy Company LP; Magnolia Energy LP; Redbud Energy LP.

Description: Cottonwood Energy Company, LP and Magnolia Energy, LP et al submits their triennial market power update in support of their continued authorization to sell energy and capacity at market based rates.

Filed Date: 03/16/2007.

Accession Number: 20070320–0055.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER01–1011–011.

Applicants: Redbud Energy LP.

Description: Redbud Energy LP submits revisions to its market-based Tariff, Original Sheet 1 et al to FERC Electric Tariff, First Revised Volume 1.

Filed Date: 03/16/2007.

Accession Number: 20070320–0050.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER01–1335–010.

Applicants: Magnolia Energy LP.

Description: Magnolia Energy, LP submits revisions to its market-based FERC Electric Tariff, Original Volume 1 pursuant to FERC's 2/16/06 Order.

Filed Date: 03/16/2007.

Accession Number: 20070320–0052.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER03–985–002.

Applicants: El Cap II, LLC.

Description: El Cap II, LLC submits its revised Market-Based Tariff to comply w/Commission Order issued 1/11/07.

Filed Date: 03/13/2007.

Accession Number: 20070319–0033.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 03, 2007.

Docket Numbers: ER05–273–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Section 22.2 of its OAT&EM Tariff pursuant to Commission's 2/14/07 order.

Filed Date: 03/16/2007.

Accession Number: 20070320–0049.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER07–476–001.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England, Inc submits correction to its 1/29/07 filing which included a paragraph that was not completely accurate in its Description of the method of determining Incremental ARR Awards.

Filed Date: 03/15/2007.

Accession Number: 20070319–0036.

Comment Date: 5 p.m. Eastern Time on Thursday, April 05, 2007.

Docket Numbers: ER07–512–001.

Applicants: Lockhart Power Company.

Description: Lockhart Power Company submits a supplement to its 2/2/07 request to revise its FERC Electric Tariff, Original Volume 1 pursuant to Order 614 and Part 35 of the Commission's regulations.

Filed Date: 03/16/2007.

Accession Number: 20070320–0053.

Comment Date: 5 p.m. Eastern Time on Monday, March 26, 2007.

Docket Numbers: ER07–632–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC on behalf of Neptune Regional Transmission System LLC submits a new Schedule 14 to PJM's Open Access Transmission Tariff.

Filed Date: 03/16/2007.

Accession Number: 20070320–0054.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER07–633–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Open Access Transmission Tariff and Market Administration Control Area Services Tariff.

Filed Date: 03/15/2007.

Accession Number: 20070320–0048.

Comment Date: 5 p.m. Eastern Time on Friday, March 30, 2007.

Docket Numbers: ER07–634–000.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corporation on behalf of AEP Eastern Operating Companies submits its Third Amended and Restated PJM Services and Cost Allocation Agreement etc.

Filed Date: 03/16/2007.

Accession Number: 20070320–0047.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER07–635–000.

Applicants: Western Systems Power Pool Inc.

Description: Western Systems Power Pool Inc informs FERC that it has changed its name to WSPP Inc and as a result of the change it has succeeded to the pro forma open access transmission tariff et al.

Filed Date: 03/16/2007.

Accession Number: 20070320–0056.

Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–24–001.

Applicants: Trans-Allegheny Interstate Line Company.

Description: Trans-Allegheny Interstate Line Company submits a Supplement to its filing made 2/22/07 pursuant to Section 204 of the Federal Power Act and Part 34 of FERC's Regulations.

Filed Date: 03/15/2007.

Accession Number: 20070319–0032.

Comment Date: 5 p.m. Eastern Time on Monday, March 26, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified *Comment Date.* It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They

are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5461 Filed 3–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2192–022–WI]

Consolidated Water Power Company; Notice of Availability of Final Environmental Assessment

March 20, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for a transfer of project lands and acquisition of lands at the Biron Project (FERC No. 2192), and has prepared a final environmental assessment (FEA) for the proposal. The proposed transfer of project lands and acquisition of lands would occur on the Biron reservoir in Wood County, Wisconsin.

In the application, Consolidated Water Power (licensee) requests Commission authorization to exchange approximately 3.14 acres of licensee-owned lands with 3,000 linear feet of shoreline along the Biron flowage, for three different parcels of land totaling approximately 205.213 total acres. The first parcel has 830 linear feet of river shoreline and consists of 47.546 acres. The second parcel has 126 linear feet of river shoreline and consists of 2.960 acres, abutting an existing licensee-owned boat launch. The third parcel consists of islands in the river, peninsulas, and a roadside access totaling 154.84 acres (48.82 acres above water). These island perimeters, peninsulas, and the roadside access total 33,749 linear feet of waterfront. All lands are currently within the project boundary, and the licensee intends to retain flowage rights over any conveyed lands, and to retain all lands within the project boundary. The FEA contains the Commission staff's analysis of the probable environmental impacts of the proposed land conveyances and exchanges.

The FEA is attached to a Commission order titled ''Order Amending License to Authorize Land Exchange,'' which was issued November 17, 2006, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First St., NE., Room 2A, Washington, DC 20426. The FEA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (prefaced by P- and excluding the last three digits) into the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5459 Filed 3–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12058–002, Project No. 12686–001]

Baker County, OR; Notice of Project Number and Docket Change for the Proposed Mason Dam Hydroelectric Project

March 20, 2007.

On April 27, 2006, Baker County, Oregon filed a Notice of Intent and Pre-Application Document for the proposed Mason Dam Hydroelectric Project, initiating the pre-filing activities of the Commission's Integrated Licensing Process. On May 23, 2006, Baker County filed an application for a second preliminary permit to allow for continued study of the site. The Commission issued the new preliminary permit to Baker County on January 19, 2007.

As a result of the issuance of the new preliminary permit, the project number assigned to Baker County for the proposed Mason Dam Hydroelectric Project has changed. The new project number is P–12686. All future filings being made in regards to the ongoing pre-filing activities of the Integrated Licensing Process for the proposed project should use P–12686–001 to identify the filing. The original project number and docket (P–12058–002), assigned to this proceeding and the proposed project is now CLOSED.

All filings made to date, under P–12058–002 with regard to the pre-filing activities of the Commission's Integrated Licensing Process for the proposed Mason Dam Hydroelectric Project, will be cross referenced to the new project number and docket P–12686–001 and will continue to be part of the official public record. Therefore, re-filing of these documents is not necessary.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5458 Filed 3–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–149–000]

Gulf South Pipeline Company, LP; Notice of Technical Conference

March 20, 2007.

Take notice that the Commission will convene a technical conference in the referenced proceeding on Tuesday, April 10, 2007, at 9 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The Commission's February 28, 2007 order in this proceeding directed that a technical conference be held to address the technical, engineering and operational issues raised by Gulf South Pipeline Company, LP's (Gulf South) proposed gas quality specifications filed in Docket No. RP07–149–000.[1]

Gulf South and the other parties should be prepared to address the following topics at the technical conference and to include technical, engineering and operational information in support:

1. Whether Gulf South's tariff proposals are consistent with the Interim Guidelines in the Natural Gas Council's White Papers on Natural Gas Interchangeability and Non-Combustion End Use and Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure?

2. To the extent Gulf South's proposals are not consistent with the guidelines, has Gulf South supported any divergence from the Interim Guidelines?

3. Whether Gulf South's current operating parameters are sufficient to ensure the acceptance of gas by interconnecting pipelines?

[1] Gulf South Pipeline Company, LP, 118 FERC ¶ 61,161 (2007).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact David Maranville at (202) 502–6351 or e-mail *david.maranville@ferc.gov.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5460 Filed 3–23–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0895; FRL–8292–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal); EPA ICR No. 0282.14, OMB Control No. 2060–0048

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 25, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0895, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: 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: Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; e-mail address: *reyes-morales.nydia@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 January 10, 2007 (72 FR 1221), 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 No. EPA–HQ–OAR–2006–0895, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Air and Radiation Docket and Information Center is 202–566–1742.

Use EPA's electronic docket and comment system at 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 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 *http://www.regulations.gov*.

Title: Engines Emission Defect Reports and Voluntary Emission Recall Reports (Renewal).

ICR Numbers: EPA ICR No. 0282.14, OMB Control No. 2060–0048.

ICR Status: This ICR is scheduled to expire on March 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, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Per sections 207(c)(1) and 213 of the Clean Air Act (CAA), when a substantial number of properly maintained and used engines produced by a manufacturer do not conform to emission standards, the manufacturer is required to recall the engines. Manufacturers are also required to submit Defect Information Reports (DIRs) to alert EPA of the existence of emission-related defects on certain classes of engines that may cause the engines' emissions to exceed the standards and ultimately may lead to a recall. EPA uses these reports to target potentially nonconforming classes of engines for future testing, to monitor compliance with applicable regulations and to order a recall, if necessary. Manufacturers can also initiate a recall voluntarily by submitting a Voluntary Emission Recall Report (VERR). VERRs and VERR updates allow EPA to determine whether the manufacturer conducting the recall is acting in accordance with the CAA and to examine and monitor the effectiveness of the recall campaign.

The information is collected by the Heavy-duty and Nonroad Engine Group, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information submitted by manufacturers is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 148 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements 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: Manufacturers of on-highway, heavy-duty engines, nonroad compression-ignition and spark-ignition engines (including engines used in recreational vehicles), marine engines, locomotives and locomotive engines.

Estimated Number of Respondents: 18.

Frequency of Response: On occasion and quarterly.

Estimated Total Annual Hour Burden: 5,026.

Estimated Total Annual Cost: $324,579, includes $571 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 609 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is an adjustment to the estimates to reflect the fact that new manufacturers will take more time to perform certain tasks and to account for an expected increase in respondents.

Dated: March 13, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–5486 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–8291–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Compliance Assurance Monitoring Program (Renewal); EPA ICR No. 1663.05, OMB Control No. 2060–0376

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 25, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2003–0152, 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: Peter Westlin, Office of Air Quality Planning and Standards, Environmental Protection Agency, mail code D243–05, Research Triangle Park, NC 27711; telephone number: 919–541–1058; fax number: 919–541–1039; e-mail address: *westlin.peter@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 December 6, 2006 (71 FR 70757), 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.

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0152 which is available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

Title: Compliance Assurance Monitoring Program (Renewal).

ICR Numbers: EPA ICR No. 1663.05, OMB Control No. 2060–0376.

ICR Status: This ICR is currently scheduled to expire on March 31, 2007. 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, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Clean Air Act (Act) contains several provisions directing EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth title V (operating permits provisions) and title VII (enforcement provisions) of the Act. Title V directs EPA to implement monitoring and certification requirements through the operating permits program. Section 504(b) of the Act allows EPA to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must ''set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions.'' Section 114(a)(3) requires EPA to promulgate rules for enhanced monitoring and compliance certifications. Section 114(a)(1) of the Act provides additional authority concerning monitoring, reporting, and record keeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. EPA promulgated the Compliance Assurance Monitoring (CAM) rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900) to implement these authorities.

In accordance with these provisions, the monitoring information that source owners must submit must also be available to the public, except as

entitled top protection from disclosure as allowed in section 114(c) of the Act.

Burden Statement: We estimate the annual public reporting and recordkeeping burden for this collection of information to average about 445 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.

Based on the Agency's knowledge of the number of title V permits issued since 1997 and the implementation of part 64 through permit renewals, the expected impact of the CAM program for the 3 years from October 1, 2006 until September 30, 2009 is about 3.12 million hours annually. The CAM rule will incur an average annual cost of about $114.5 million in 2005 dollars. There are no annualized capital and operation and maintenance costs.

The CAM program potentially affects about 25,000 pollutant-specific emissions units nationwide. The annual burden for source owners or operators is about 3.1 million hours for pollutant-specific emissions units combined. The CAM rule will incur an average annual cost of about $112 million in 2005 dollars. There are no annualized capital and operational and maintenance costs for monitoring programs in the cost burden.

During the period, permitting authorities will review CAM rule submittals from source owners or operators whose permits have already been issued and are renewing those permits as the 5-year permit terms expire. Permitting authorities will also be interacting with the source owners or operators in addressing the CAM in semi-annual monitoring reports and reporting CAM data as necessary. We estimate the annual CAM burden to permitting authorities to be about 37,000 hours and about $1.9 million.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: Owners and operators of title V sources with controlled pollutant specific emissions units that have a pre-control potential to emit major amounts of regulated air pollutants and permitting authorities.

Estimated Number of Respondents: 418 (sources plus permitting authorities, annually)

Frequency of Response: Incremental semi-annual and annual reports, plus every 5 years at permit renewal.

Estimated Total Annual Hour Burden: 3,121,743 hours.

Estimated Total Annual Costs: $114.5 million. This includes annual labor costs for sources and permitting authorities and no capital or O&M costs.

Changes in the Estimate: There is an increase of 3,058,055 hours in the total estimated respondent annual burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects the significant increase in number of respondents resulting from the implementation of the rule and an increased number of operating permit renewals, and EPA's reassessment of the reporting and recordkeeping burdens associate with implementing this rule.

Dated: March 16, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–5488 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0437 FRL–8291–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Nitric Acid Plants (Renewal), EPA ICR Number 1056.09, OMB Control Number 2060–0019

AGENCY: Environmental Protection Agency (EPA).

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. This ICR is scheduled to expire on April 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 25, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0437, to (1) EPA online using *http://www.regulations.gov* (our preferred method), 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: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@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.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA–2006–0437, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center 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 Center is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.epa.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 *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: NSPS for Nitric Acid Plants (Renewal).

ICR Numbers: EPA ICR Number 1056.09, OMB Control Number 2060–0019.

ICR Status: This ICR is scheduled to expire on April 30, 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, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Nitric Acid Plants were proposed on August 17, 1971, and promulgated on June 14, 1974. These standards apply to nitric acid production units, which commenced construction, modification or reconstruction after the date of proposal. The standards require periodic recordkeeping to document process information relating to the source's ability to meet the requirements of the standard and to note the operational conditions under which compliance was achieved.

Owners or operators of the affected facilities described must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators 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, records and semiannual reports are required of all sources subject to NSPS. This information is used by the Agency to identify sources subject to the standards to insure that the best demonstrated technology is being properly applied.

In the Administrator's judgment, volatile organic compound (VOC) emissions from nitric acid plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

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 Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 25 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; 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: Nitric acid plants.

Estimated Number of Respondents: 24.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 1,290.

Estimated Total Costs: $2,549,639, which includes $68,000 annualized Capital Start up costs, $2,400,000 annualized Operations & Maintenance (O & M) costs, and $81,639 annualized Labor costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: March 14, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–5490 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0143; FRL–8291–5]

Request for Nominations to the EPA Human Studies Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of the Science Advisor (OSA) is soliciting nominations of qualified individuals in the area of biostatistics to serve on the Human Studies Review Board (HSRB). The HSRB is a Federal advisory committee, operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 section 9, providing advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research.

DATES: Nominations should be submitted to EPA no later than April 25, 2007.

ADDRESSES: Submit your nominations (''comments''), identified by Docket ID No. EPA–HQ–ORD–2007–0143, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Room 3304, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0143. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your nominations to Docket ID No. EPA–HQ–ORD–2007–0143. EPA's policy is that all nominations 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 nomination 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 nomination. If you send an e-mail nomination directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the nomination that is placed in the public docket and made available on the Internet. If you submit a nomination electronically, EPA recommends that you include your name and other contact information in the body of your nomination and with any disk or CD–ROM you submit. If EPA cannot read your nomination due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider it. 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Room 3334, EPA West, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Paul I. Lewis, Office of the Science Advisor, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–8381, *fax number:* (202) 564–2070, *e-mail: lewis.paul@epa.gov.*

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

C. What Should I Consider as I Prepare My Nomination for EPA?

You may find the following suggestions helpful for preparing your nomination:

1. Providing as much supporting information as possible about the nominee, including contact information.
2. Make sure to submit your nomination by the deadline in this document.
3. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2005, the President signed into law the Department of Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54 (Appropriations Act), which provided appropriated funds for the Environmental Protection Agency and other Federal departments and agencies. The Appropriations Act, among other points, addressed intentional dosing human toxicity studies for pesticides and directed the Agency to establish an independent Human Subjects Review Board to review such studies. On February 6, 2006 the Agency published a final rule for protections for subjects in human research (71 FR 6138) that called for creating a new, independent Human Studies Review Board and described its responsibilities in the following language:

> The Human Studies Review Board shall comment on the scientific and ethical aspects of research proposals and reports of completed research with human subjects submitted by EPA for its review and on request, advise EPA on ways to strengthen its programs for protection of human subjects of research. 40 CFR 26.1603(b)

A charter for the Human Studies Review Board dated February 21, 2006 was issued in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 Section 9(c) stating that the HSRB will:

> Provide advice, information and recommendations on issues related to scientific and ethical aspects of human subjects research. The major objectives are to provide advice and recommendations on: (a) Research proposals and protocols; (b) reports of completed research with human subjects; and (c) how to strengthen EPA's programs for protection of human subjects.

This notice requests nominations of candidates to serve as a member of the HSRB in the area of biostatistics. General information concerning the HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate individuals to be considered as prospective candidates for the HSRB. Additional avenues and resources may be utilized in the solicitation of nominees to encourage a broad pool of expertise. Nominees should be experts who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the ethical and/or scientific issues that may be considered by the HSRB. EPA is seeking nominees who are nationally recognized experts in biostatistics, specifically expertise in statistical design and analysis of research involving human subjects.

All nominations should include: (1) A current curriculum vitae (C.V.) which provides the nominee's educational background, qualifications, leadership positions in national associations or professional publications, relevant research experience and publications;

and (2) a summary of the above in a biographical sketch (''biosketch'') of no more than one page.

The qualifications of nominees received in reply to this notice will be assessed in terms of the specific expertise sought for the HSRB. Qualified nominees who agree to be considered further will be included in a smaller subset (known as the ''Short List''). This Short List consisting of nominee's name and biosketch will be posted for public comment on the OSA Web site *http://www.epa.gov/osa/index.htm.* The public will be requested to provide relevant information or other documentation on nominees that OSA should consider in evaluating the candidates. Public comments will be accepted for 14 calendar days on the Short List. Board members will be selected from the Short List. Short List candidates not selected for HSRB membership may be considered for future HSRB membership as vacancies become available or as HSRB consultants for future HSRB meetings. The Agency estimates posting the names of Short List candidates sometime in late May. However, please be advised that this is an approximate time frame and the date could change. Thus, if you have any questions concerning posting of Short List candidates on the OSA Web site, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

For the HSRB, a balanced panel is characterized by inclusion of members who possess the necessary domains of knowledge, the relevant technical perspectives, and the collective breadth of experience to adequately address the Agency's charge. Interested candidates who are employees of a federal department or agency (other than EPA) or are members of another federal advisory committee are eligible to serve on the HSRB, and their nominations are welcome. Other factors that will be considered include: Availability to participate in the Board's scheduled meetings, absence of any conflicts of interest and absence of an appearance of a lack of impartiality, independence with respect to the matters under review, and public comments in response to the Short List. Though financial conflicts of interest or the appearance of a lack of impartiality, lack of independence, or bias may lead to nonselection, the absence of such concerns does not ensure that a candidate will be selected to serve on the HSRB. Numerous qualified candidates are likely to be identified. Selection decisions will involve careful weighing a number of factors including, but not limited to, the candidates' areas of expertise and professional qualifications, and responses to the Short List in achieving an overall balance of different perspectives on the Board.

People who are hired to serve on the Board are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, each nominee will be asked to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]). This form seeks information regarding the candidate's financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. However, this form is confidential and will not be disclosed to the public. The EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality, or any prior involvement with the development of the documents under consideration, including previous scientific peer review, before the candidate is considered further for service on the HSRB.

Candidates selected from the Short List will be appointed to the HSRB. HSRB members are to perform several activities including reviewing extensive background materials between meetings of the Board, preparing draft responses to Agency charge questions, attending Board meetings, participating in the discussion and deliberations at these meetings, drafting assigned sections of meeting reports, and reviewing and helping to finalize Board reports.

Nominations should be submitted by one of the methods listed under **ADDRESSEES**.

The Agency will consider all nominations for HSRB membership that are received on or before April 25, 2007. However, final selection of members is a discretionary function of the Agency and will be announced on the OSA Web site *http://www.epa.gov/osa/index.htm* soon after comments are received on the Short List.

Dated: March 19, 2007.

George M. Gray,

Science Advisor.

[FR Doc. E7–5484 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0216; FRL–8291–4]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of human subjects' research.

DATES: The public meeting will be held on April 18, 2007 from 10 a.m. to approximately 5:30 p.m., Eastern Time and April 19–20, 2007 from 8:30 a.m. to approximately 5:30 p.m., Eastern Time.

Location: Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Paul Lewis, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–8381; f*ax:* (202) 564 2070; *e-mail addresses: lewis.paul@epa.gov*. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/*.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2007–0216, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC),

ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0216. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 a.m. Eastern Standard Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by late March 2007. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support your views.

d. Provide specific examples to illustrate your concerns and suggest alternatives.

e. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2007–0216 in the subject line on the first page of your request.

a. *Oral comments.* Requests to present oral comments will be accepted up to April 11, 2007. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Standard Time, April 11, 2007 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not

our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Standard Time, April 11, 2007. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

E. Background

A. Topics for Discussion

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. app.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (a) Research proposals and protocols; (b) reports of completed research with human subjects; and (c) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

At the April 2007 meeting of the HSRB, EPA will present for HSRB review:

- The results of two completed insect repellent efficacy studies on an aerosol formulation of the active ingredient IR3535, studies which the Agency intends to rely in making registration decisions. Protocols for this research were reviewed by the Board at its June and October 2006 meetings.
- A proposal for a new field study of the effectiveness of products containing oil of lemon eucalyptus in repelling mosquitoes.
- Completed studies of human skin irritation and skin sensitization on two pending pesticide products whose use would involve extensive dermal exposure. These studies were conducted before the effective date of EPA's human studies rules (April 7, 2006).
- EPA's assessment of the need for new research on the exposure received by occupational handlers who mix, load, or apply agricultural or antimicrobial pesticides.
- An EPA ''draft framework'' concerning best practices for recruiting and enrolling subjects in studies of occupational exposure.

In addition, at the Board's request, EPA will present its interpretation and application of the standard in 40 CFR 26.1705: ''EPA shall not rely on data from any research initiated after April 7, 2006, unless EPA has adequate information to determine that the research was conducted in substantial compliance with [EPA's human studies rules].'' Finally, the Board may also discuss planning for future HSRB meetings.

B. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 19, 2007.

George M. Gray,

Science Advisor.

[FR Doc. E7–5492 Filed 3–23–07; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

The National Environmental Policy Act—Collaboration Handbook

AGENCY: Council On Environmental Quality.

ACTION: Notice and request for comments.

SUMMARY: The Council on Environmental Quality (CEQ) used an interagency work group to develop a handbook to help NEPA practitioners improve the effectiveness of their NEPA processes through collaboration. The handbook focuses on collaboration in the context of the NEPA process, outlines general principles, presents useful steps, and provides information on methods of collaboration. CEQ invites comments on the proposed handbook, ''Collaboration in NEPA—A Handbook for NEPA Practitioners,'' that is available from CEQ directly or at *http://www.NEPA.gov* in the Current Developments section.

DATES: Written comments should be submitted on or before May 4, 2007.

ADDRESSES: Copies of the proposed handbook can be requested from CEQ. Electronic comments on the proposed handbook and requests for a copy of the proposed handbook can be sent to *horst_greczmiel@ceq.eop.gov* with the subject line reading ''NEPA Modernization (Collaboration).'' Fax written comments and requests to (202) 456–0753 with the subject line reading ''NEPA Modernization (Collaboration).'' Electronic or facsimile comments or requests are preferred because Federal offices experience intermittent mail delays caused by security screening. Written comments and requests may also be submitted to ''NEPA Modernization (Collaboration), Attn: Associate Director for NEPA Oversight, 722 Jackson Place, NW., Washington, DC 20503.''

FOR FURTHER INFORMATION CONTACT: Horst Greczmiel, 202–395–5750.

SUPPLEMENTARY INFORMATION: The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force and is now implementing recommendations designed to modernize the implementation of NEPA and make the NEPA process more effective and efficient. Additional information is available on the task force Web site at *http://ceq.eh.doe.gov/ntf.*

The proposed handbook, ''Collaboration in NEPA—A Handbook for NEPA Practitioners,'' was developed to assist those responsible for conducting National Environmental Policy Act (NEPA) analyses in expanding the effective use of collaboration as part of the NEPA process. Collaboration is defined for purposes of the handbook as seeking agreements at one or more stages of the NEPA process by cultivating shared vision, trust, and communication. The main goal of the handbook is to

encourage collaboration by providing examples and case studies that show how agencies have collaborated with other agencies and interested parties in the past and how agencies can better collaborate throughout a NEPA process.

The handbook describes the context for when collaboration works well, provides a basic approach to designing a collaborative NEPA process, examines the various opportunities for collaboration throughout the NEPA process, and addresses challenges to collaboration during the NEPA process. In addition to examples of strategies for preventing conflict, the handbook provides examples of Memoranda of Understanding, case studies, and resources for practitioners.

Public comments to the proposed handbook are requested by May 4, 2007.

March 19, 2007.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. E7–5454 Filed 3–23–07; 8:45 am]

BILLING CODE 3125–W7–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Maritime Commission (FMC).

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission invites comments on the continuing information collection (extension with no changes) listed below in this notice.

DATES: Comments must be submitted on or before May 25, 2007.

ADDRESSES: You may send comments to: Derek O. Scarbrough, Chief Information Officer, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573, (Telephone: (202) 523–5800), *cio@fmc.gov.* Please reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and instructions, or copies of any comments received, contact Jane Gregory, Management Analyst, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523–5800), *jgregory@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Federal Maritime Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. An automated form for the license application, FMC–18, is currently in development. A rule will be published as soon as the automated form is available, for use at the option of the applicant.

Information Collection Open for Comment

Title: 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms.

OMB Approval Number: 3072–0018 (Expires July 31, 2007).

Abstract: Section 19 of the Shipping Act of 1984 (the ''Act''), 46 U.S.C. 40101–41309 (2006), as modified by Pub. L. 105–258 (The Ocean Shipping Reform Act of 1998) and Section 424 of Pub. L. 105–383 (The Coast Guard Authorization Act of 1998), provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission has implemented the provisions of section 19 in regulations contained in 46 CFR 515, including financial responsibility forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, and its related license application form, FMC–18.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with shipping statutes and regulations and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

Frequency: This information is collected when applicants apply for a license or when existing licensees change certain information in their application forms.

Type of Respondents: The types of respondents are persons desiring to obtain a license to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 4,765 entities.

Estimated Time Per Response: The time per response for completing Application Form FMC–18 averages 2 hours. The time to complete a financial responsibility form averages 20 minutes.

Total Annual Burden: The Commission estimates the total annual person-hour burden at 3,595 person-hours.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–5483 Filed 3–23–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e–mail to *mmenchik@omb.eop.gov*.

Final approval under OMB delegated authority the revision, without extension, of the following reports:

1. Report title: Consolidated Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C.

OMB control number: 7100–0128.

Frequency: Quarterly.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 117,504 hours.

Estimated average hours per response: 38.35 hours.

Number of respondents: 766.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 522(b)(4).

Abstract: The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on–site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre–inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council's Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from the BHC and is generally filed by top–tier BHCs with total consolidated assets of $500 million or more.

Current actions: On January 11, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 1325) requesting public comment for 60 days on the revision, without extension, of the Consolidated Financial Statements for Bank Holding Companies, effective with the March 31, 2007, report date. The comment period expired on March 12, 2007. The Federal Reserve did not receive any comment letters. However, five comments were received by the Federal Reserve, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency (the banking agencies) on proposed revisions to the Call Reports that parallel the proposed revisions to the FR Y–9C, and were taken into consideration for this proposal. The comments are summarized and addressed below.

Reporting on Fair Value Measurements and the Use of the Fair Value Option

On September 15, 2006, the Financial Accounting Standards Board (FASB) issued Statement No. 157, Fair Value Measurements (FAS 157), which is effective for banking institutions and other entities for fiscal years beginning after November 15, 2007. Earlier adoption of FAS 157 is permitted as of the beginning of an earlier fiscal year, provided the BHC has not yet issued a financial statement or filed a FR Y–9C report for any period of that fiscal year. Thus, a BHC with a calendar year fiscal year may voluntarily adopt FAS 157 as of January 1, 2007. The fair value measurements standard provides guidance on how to measure fair value and would require BHCs and other entities to disclose the inputs used to measure fair value based on a three–level hierarchy for all assets and liabilities that are remeasured at fair value on a recurring basis.[1]

The FASB issued a final Statement No. 159, The Fair Value Option for Financial Assets and Financial Liabilities (FAS 159), on February 15, 2007. This standard allows BHCs and other entities to report certain financial assets and liabilities at fair value with the changes in fair value included in earnings. The Federal Reserve anticipates that relatively few BHCs will elect to use the fair value option for a significant portion of their financial assets and liabilities.

According to the FASB's web site (www.fasb.org), the FASB Board has decided to require that the effective date of the final fair value option standard be the same as the effective date of FAS 157. Thus, the final fair value option standard should be effective for financial statements issued for fiscal years beginning after November 15, 2007. The FASB Board has also decided to permit an entity to early adopt the final fair value option standard provided that the entity also adopts all of the requirements (measurement and disclosure) of FAS 157 concurrent with or prior to the early adoption of the final fair value option standard. Furthermore, the FASB Board would permit early adoption of the final fair value option standard within 120 days of the beginning of the entity's fiscal year, thereby making the fair value option election retroactive to the beginning of that fiscal year (or the date of initial recognition, if later) provided that the entity has not yet issued any interim financial statements for that fiscal year. Thus, a BHC with a calendar year fiscal year that voluntarily adopts FAS 157 as of January 1, 2007, would also be able to adopt the final fair value option standard as of that same date.

The Federal Reserve proposed to clarify the FR Y–9C reporting instructions to explain where financial assets and liabilities measured under the fair value option should be reported in the existing line items of the FR Y–9C. The Federal Reserve also proposed to add a new Schedule HC–Q to the FR Y–9C to collect data, by major asset and liability category, on the amount of

[1] The FASB's three–level fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the reporting bank holding company has the ability to access at the measurement date (e.g., the FR Y–9C as–of date). Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 3 inputs are unobservable inputs for the asset or liability.

assets and liabilities to which the fair value option has been applied along with separate disclosure of the amount of such assets and liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy. The categories are:

- Securities held for purposes other than trading with changes in fair value reported in current earnings;
- Loans and leases;
- All other financial assets and servicing assets;
- Deposit liabilities;
- All other financial liabilities and servicing liabilities; and
- Loan commitments (not accounted for as derivatives).

In addition, the Federal Reserve proposed to collect data on trading assets and trading liabilities in the new schedule from those BHCs that complete Schedule HC–D, Trading Assets and Liabilities, i.e., BHCs that reported average trading assets of $2 million or more for any quarter of the preceding calendar year. In the proposed new schedule, such BHCs would report the carrying amount of trading assets and trading liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy.

The FASB's fair value measurements standard requires banking organizations and other entities to consider the effect of a change in their own creditworthiness when determining the fair value of a financial liability. The Federal Reserve proposed to add one new data item to Schedule HC–R, Regulatory Capital, for the cumulative change in the fair value of all financial liabilities accounted for under the fair value option that is attributable to changes in the BHC's own creditworthiness. This amount would be excluded from the BHC's retained earnings for purposes of determining Tier 1 capital under the Federal Reserve's regulatory capital standards.

Finally, the Federal Reserve proposed to clarify the instructions to Schedule HI for the treatment of interest income on financial assets and interest expense on financial liabilities measured under a fair value option. The instructions would be modified to instruct BHCs to separate the contractual year–to–date amount of interest earned on financial assets and interest incurred on financial liabilities that are reported under a fair value option from the overall year–to–date fair value adjustment and report these contractual amounts in the appropriate interest income or interest expense data items on Schedule HI.

Only one commenter, a banking trade association, offered comments on fair value option reporting in the Call Report, urging ''the agencies to proceed cautiously with any major revisions to the Call Report or TFR prior to the official release of the Fair Value Option statement.'' The trade association also requested that the agencies delay the March 31, 2007, effective date of the proposed reporting revisions related to the fair value option if the release of the FASB's final fair value option standard is delayed beyond its expected issuance in the first quarter of 2007. The trade association did not address the proposed reporting revisions for the fair value option and fair value measurements themselves.

The Federal Reserve agrees on the need for caution in implementing the proposed reporting revisions related to the fair value option and fair value measurements. Accordingly, only if BHCs adopt this standard in the first quarter of 2007 for other financial reporting purposes would the fair value option reporting requirements in the FR Y–9C take effect as of March 31, 2007. Otherwise, these reporting requirements would be delayed until BHCs elect the fair value option for other financial reporting purposes. Additionally, the Federal Reserve will proceed with the new Schedule HC–R data item for fair value changes included in retained earnings that are attributable to changes in a BHC's own creditworthiness.

Reporting of Certain Data on 1–4 Family Residential Mortgage Loans withTerms that Allow for Negative Amortization

The Federal Reserve proposed to collect certain data items to monitor the extent of holdings of closed–end 1–4 family residential mortgage loan products whose terms allow for negative amortization. As proposed, all BHCs would report the total amount of their holdings of such closed–end mortgage loans in a new memorandum item in Schedule HC–C, Loans and Leases. The Federal Reserve also proposed to collect two additional memorandum items on Schedule HC–C and another new memorandum item on Schedule HI, Income Statement, from BHCs with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The two additional Schedule HC–C memorandum items would be (1) the total maximum remaining amount of negative amortization contractually permitted on closed–end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed–end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The Schedule HI memorandum item would be the year–to–date noncash income on closed–end loans with a negative amortization feature secured by 1–4 family residential properties.

The Federal Reserve's proposal stated that the threshold for identifying BHCs with a significant volume of negatively amortizing residential mortgage loans would be based on the aggregate amount of these loans being in excess of either a certain dollar amount, e.g., $100 million or $250 million, or a certain percentage of the total loans and leases (in domestic offices) reported on Schedule HC–C, e.g., 5 percent or 10 percent. For reporting during 2007, a BHC with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items using data reflected in its December 31, 2006, FR Y–9C report. For reporting in 2008 and subsequent years, the determination would be based on data from the previous year–end FR Y–9C. Thus, BHCs with negatively amortizing 1–4 family residential mortgage loans in excess of the reporting threshold as of the end of any particular calendar year would report these three data items for the next entire calendar year.

The Federal Reserve requested comment on the specific dollar amount and percentage of loans that should be used in setting the size threshold for additional reporting on negatively amortizing loans. The comments received from a banking organization and a banking trade association addressed the comparable threshold proposed for the Call Report. In this regard, the banking organization recommended that the agencies base their reporting threshold only on a percentage of an institution's total loans and leases and not also include a fixed dollar amount of negatively amortizing loans in the threshold test. The organization stated that using a percentage test ''is more in line with the Agencies' goals of ensuring the safety and soundness of institutions while minimizing the burden of information collection'' because ''safety and soundness concerns become more prominent only as an institution's concentration in these loans increases relative to the rest of its portfolio.''

In its comments, the banking trade association referred to the agencies' Interagency Guidance on Nontraditional Mortgage Product Risks, which they published at the beginning of October 2006,[2] noting that this guidance ''specifically states that the agencies did not intend to establish concentration caps for institutions that underwrite''

[2] See 71 FR 58609, October 4, 2006.

nontraditional mortgages, including the residential mortgages with negative amortization features on which data would be reported in the Call Report. The trade association expressed concern that the establishment of a reporting threshold for reporting certain data on these loans would be ''a de facto concentration limit above which heightened regulatory scrutiny could be implied for such loans.'' This ''would be inconsistent with the Interagency Guidance.'' As a consequence, the trade association suggested eliminating the entire proposed reporting requirement for negatively amortizing residential mortgage loans. Alternatively, if the proposed reporting requirement were to be retained, the trade association recommended eliminating the reporting threshold for the three additional data items and requiring all banks to report these data items.

The Federal Reserve has considered these comments that focus on the reporting threshold. The intent of the proposal to establish a reporting threshold for certain additional data on negatively amortizing residential mortgage loans was not to establish concentration limits for these mortgage products. Rather, as noted in the proposal, the Federal Reserve currently ''has no readily available means of identifying the industry's exposure'' to these products, which led to the proposal to collect certain data to assist the Federal Reserve in ''monitor[ing] the extent of use of negatively amortizing residential mortgage loans in the industry.'' Thus, the reporting of data on these mortgages is intended to support agency analysis at both the institution level and the industry level. The threshold for reporting additional data on negatively amortizing residential mortgage loans that are present at an institution in a significant volume was designed to limit the reporting burden on institutions, particularly small BHCs, with a nominal volume of these loans. A threshold based solely on a percentage of total loans and leases would not enable the Federal Reserve to gain an industry perspective on the amount of remaining contractually permitted negative amortization, capitalized negative amortization, and noncash income from negative amortization and how they relate to the amount of negatively amortizing residential mortgages. Therefore, the Federal Reserve is proceeding with a reporting threshold for the three additional data items that incorporates both a dollar amount test and a percentage test. More specifically, BHCs will report the three additional data items pertaining to their negatively amortizing residential mortgages if the amount of these mortgages exceeds the lesser of $100 million or 5 percent of their total loans and leases (in domestic offices), both held for sale and held for investment.

A data processing servicer commented on the proposed March 31, 2007, effective date for reporting this information. The servicer observed that the end of the proposal's comment period is less than 90 days before this effective date, while it typically needs a minimum of 180 days to implement programming changes after requirements are finalized. As a consequence, the servicer stated that it would not be able to commit to completing the programming, testing, and implementation of changes to its mortgage software by March 31, 2007, to enable its client banks to report the proposed information on negatively amortizing residential mortgages.

The Interagency Guidance on Nontraditional Mortgage Product Risks indicates that management information and reporting systems ''should allow management to detect changes in the risk profile of its nontraditional mortgage loan portfolio. The structure and content should allow the isolation of key loan products, risk–layering loan features, and borrower characteristics.'' The guidance further provides that ''[a]t a minimum, information should be available by loan type,'' such as for the closed–end residential mortgage loans with negative amortization features that are the subject of this proposal, and ''by borrower performance (e.g., payment patterns, delinquencies, interest accruals, and negative amortization).'' These risk management expectations for information systems were set forth approximately 180 days before the March 31, 2007, effective date of the proposed FR Y–9C items for negatively amortizing residential mortgages. In addition, for the March 31, 2007, report date, BHCs may provide reasonable estimates for these new FR Y–9C items if the requested information is not readily available.

Reporting of Certain Brokered Time Deposit Information

The banking agencies proposed to revise the reporting treatment of brokered time deposits on Call Report Schedule RC–E, Deposit Liabilities. Memorandum item 2.b, Total time deposits of less than $100,000, would be revised to include brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000, as well as brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit. Memorandum item 2.c, Total time deposits of $100,000 or more, would be revised to exclude such brokered deposits.

The Federal Reserve proposed to make similar instructional changes to seven data items on Schedule HC–E, Deposit Liabilities, to retain consistent definitions with the Call Report and to accommodate the consolidation of subsidiary bank information into the FR Y–9C report. The Federal Reserve proposed to revise the instructions for data item 1.d, Time deposits of less than $100,000 held in domestic offices of commercial bank subsidiaries; data item 2.d, Time deposits of less than $100,000 held in domestic offices of other depository institution subsidiaries; Memorandum item 1, Brokered deposits less than $100,000 with a remaining maturity of one year or less; and Memorandum item 2, Brokered deposits less than $100,000 with a remaining maturity of more than one year, to include brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000 and brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit. Data item 1.e, Time deposits of $100,000 or more held in domestic offices of commercial bank subsidiaries; data item 2.e, Time deposits of $100,000 or more held in domestic offices of other depository institution subsidiaries; and Memorandum item 3, Time deposits of $100,000 or more with a remaining maturity of one year or less, would be revised to exclude such brokered time deposits.

The banking agencies received no comments on the proposed time deposit reporting changes, and the Federal Reserve is implementing the time deposit instructional changes as proposed.

Instructional Clarifications

Servicing of Loan Participations

Bank holding companies report the outstanding principal balance of loans and other assets serviced for others in Memorandum items 2.a, 2.b, and 2.c of Schedule HC–S, Servicing, Securitization, and Asset Sale Activities. The instructions for these Memorandum items do not explicitly state whether a BHC that has sold a participation in a loan or other financial asset, which it continues to service, should include the servicing in Memorandum item 2.a, 2.b, or 2.c, as appropriate. Because the absence of

clear instructional guidance has resulted in questions from bankers and has produced diversity in practice among BHCs, the Federal Reserve proposed to clarify the instructions to these Schedule HC–S memorandum items to explicitly state that the amount of loan participations serviced for others should be included in these data items. The banking agencies received no comments specifically addressing this instructional clarification, and the Federal Reserve is implementing the clarification as proposed.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: FR Y–11. (quarterly), 32,690 hours; FR Y–11. (annually), 1,911 hours.

Estimated average hours per response: FR Y–11 (quarterly), 6.35 hours; FR Y–11 (annually), 6.35 hours.

Number of respondents: FR Y–11 (quarterly), 1,287; FR Y–11 (annually), 301.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to section (b)(4) of the Freedom of Information Act [5 U.S.C. 522(b)(4)].

Abstract: The FR Y–11 reports collect financial information for individual U.S. nonbank subsidiaries of domestic BHCs. BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Current actions: On January 11, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 1325) requesting public comment for 60 days on the revision, without extension, of the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies. The comment period expired on March 12, 2007. The Federal Reserve did not receive any comment letters. All reporting changes will be implemented effective with the March 31, 2007, report date.

Recently, the volume of 1–4 family residential mortgage loan products whose terms allow for negative amortization and the number of institutions providing borrowers with such loans has increased significantly. Loans with this feature are structured in a manner that may result in an increase in the loan's principal balance even when the borrower's payments are technically current. When loans with negative amortization are not prudently underwritten and not properly monitored, they raise safety and soundness concerns. Currently, the Federal Reserve has no readily available means of identifying the industry's exposure to such loans. Therefore, the Federal Reserve proposed to collect four data items at the nonbank subsidiary level to monitor the extension of negatively amortizing residential mortgage loans in the industry and to parallel the data items being proposed for inclusion on the FR Y–9C.

The Federal Reserve proposed to collect one memorandum item from all nonbank subsidiaries on Schedule BS–A, Loan and Leases Financing Receivables, for the total amount of closed–end loans with negative amortization features secured by 1–4 family residential properties in order to obtain an overall measure of this potentially higher risk lending activity. In addition, the Federal Reserve proposed to collect two memorandum items on Schedule BS–A and one memorandum item on Schedule IS, Income Statement, from nonbank subsidiaries with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The threshold for significant volume would be based on the aggregate carrying amount of negatively amortizing loans in excess of 5 percent of the total loans and leases reported on Schedule BS–A. A nonbank with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items based on data reported from the previous year–end FR Y–11.

The Federal Reserve also proposed two additional Schedule BS–A memorandum items to collect (1) the total maximum remaining amount of negative amortization contractually permitted on closed–end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed–end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The first memorandum item would provide a measure of the maximum exposure that could be incurred for negative amortization loans in the current 1–4 family residential property loan portfolio. The second memorandum item would then identify what component of 1–4 family mortgage loans is comprised of negative amortization loans. The Schedule IS memorandum item is year–to–date non–cash income on closed–end loans with a negative amortization feature secured by 1–4 family residential properties. This memorandum item would identify the amount and extent of interest revenue accrued and uncollected to ascertain the degree this potentially higher risk lending activity supports the BHC's overall net income. All nonbank subsidiaries with negatively amortizing 1–4 family residential loans in excess of the reporting threshold would report these data items for the entire calendar year following the end of any calendar year when the threshold was exceeded.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks (SMBs), bank holding companies (BHCs), and Edge or agreement corporations.

Annual reporting hours: FR 2314 (quarterly), 5,402 hours; FR 2314 (annually), 966 hours.

Estimated average hours per response: FR 2314 (quarterly), 6.40 hours; FR 2314 (annually), 6.40 hours.

Number of respondents: FR 2314 (quarterly), 211; FR 2314 (annually), 151.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to section (b)(4) of the Freedom of Information Act [5 U.S.C. 522(b)(4)].

Abstract: The FR 2314 reports collect financial information for direct or indirect foreign subsidiaries of U.S. SMBs, Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current actions: On January 11, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 1325) requesting public comment for 60 days on the revision, without extension, of the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations. The comment period expired on March 12, 2007. The Federal Reserve did not receive any comment letters. All reporting changes will be implemented effective with the March 31, 2007, report date.

Recently, the volume of 1–4 family residential mortgage loan products whose terms allow for negative amortization and the number of institutions providing borrowers with such loans has increased significantly. Loans with this feature are structured in a manner that may result in an increase in the loan's principal balance even when the borrower's payments are technically current. When loans with negative amortization are not prudently underwritten and not properly monitored, they raise safety and soundness concerns. Currently the Federal Reserve has no readily available means of identifying the industry's exposure to such loans. Therefore, the Federal Reserve proposed to collect four data items at the nonbank subsidiary level to monitor the extension of negatively amortizing residential mortgage loans in the industry and to parallel the data items being proposed for inclusion on the FR Y–9C.

The Federal Reserve proposed to collect one memorandum item from all nonbank subsidiaries on Schedule BS–A, Loan and Leases Financing Receivables, for the total amount of closed–end loans with negative amortization features secured by 1–4 family residential properties in order to obtain an overall measure of this potentially higher risk lending activity. In addition, the Federal Reserve proposed to collect two memorandum items on Schedule BS–A and one memorandum item on Schedule IS, Income Statement, from nonbank subsidiaries with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The threshold for significant volume would be based on the aggregate carrying amount of negatively amortizing loans in excess of 5 percent of the total loans and leases reported on Schedule BS–A. A nonbank with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items based on data reported from the previous year–end FR 2314.

The Federal Reserve also proposed two additional Schedule BS–A memorandum items to collect (1) the total maximum remaining amount of negative amortization contractually permitted on closed–end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed–end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The first memorandum item would provide a measure of the maximum exposure that could be incurred for negative amortization loans in the current 1–4 family residential property loan portfolio. The second memorandum item would then identify what component of 1–4 family mortgage loans is comprised of negative amortization loans. The Schedule IS memorandum item is year–to–date non–cash income on closed–end loans with a negative amortization feature secured by 1–4 family residential properties. This memorandum item would identify the amount and extent of interest revenue accrued and uncollected to ascertain the degree this potentially higher risk lending activity supports the BHC's overall net income. All nonbank subsidiaries with negatively amortizing 1–4 family residential loans in excess of the reporting threshold would report these data items for the entire calendar year following the end of any calendar year when the threshold was exceeded.

The Federal Reserve proposed to add the section Notes to the Financial Statements to allow respondents the opportunity to provide, at their option, any material information included in specific data items on the financial statements that the parent U.S. banking organization wishes to explain. The addition of this section would enable the Federal Reserve to automate information that respondents may want to report as footnotes to various reported data items and provide for release of this information to the public. This section is currently included on the FR Y–11.

Board of Governors of the Federal Reserve System, March 21, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–5503 Filed 3–23–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. William Scott Martin Trust and William S. Martin, Miami Beach, Florida, as trustee; to acquire control of Green Country Bancorporation, Inc., and thereby indirectly acquire control of The First State Bank, both in Ketchum, Oklahoma.

Board of Governors of the Federal Reserve System, March 21, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5437 Filed 3–23–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 2007.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Boymelgreen Financial Holdings Inc., New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of LibertyPointe Bank, both of New York, New York.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Excel Bank Corporation, Minneapolis, Minnesota, and thereby indirectly acquire voting shares of Excel Bank Minnesota, Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, March 19, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5424 Filed 3–23–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 2007.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. SWNB Bancorp, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Nevada National Bank, Las Vegas, Nevada, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 21, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5438 Filed 3–23–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 2007.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

Capitol Bancorp, Ltd., Lansing, Michigan; to convert Ohio Commerce Bank, Beachwood, Ohio, and Bank of Maumee, Maumee, Ohio, into savings institutions, and thereby engage in operating savings and loan associations, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 19, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5425 Filed 3–23–07; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation (FTR) Maximum Per Diem Rates for the States of California, Georgia, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Ohio, South Carolina, Utah and Wyoming

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 07–03, revised continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration (GSA) has reviewed the lodging rates for certain locations in the States of California, Georgia, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Ohio, South Carolina, Utah and Wyoming, using more current lodging industry data, as well as data on where Federal travelers actually stay when visiting these locations. Also, GSA has reviewed the meals and incidental expenses (M&IE) rate for certain locations in the States of Georgia, Idaho, Louisiana, Missouri, Mississippi, Utah and Wyoming. The per diem rates prescribed in Bulletin 07–03 may be found at *http://www.gsa.gov/perdiem.*

DATES: This notice is effective March 30, 2007 and applies to travel performed on or after March 30, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Cy

Greenidge, Office of Governmentwide Policy, Travel Management Policy, at (202) 219–2349. Please cite FTR Per Diem Bulletin 07–03.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of the per diem rates established for FY 2007 (see the **Federal Register** notice at 71 FR 43772, August 2, 2006), the per diem rate is being changed in the following locations:

State of California

- Alameda County
- Monterey County
- Santa Barbara County
- San Mateo County

State of Georgia

- Chatham County
- Clayton County
- Coweta County
- Fayette County

State of Idaho

Elmore County

State of Kentucky

- Kenton County

State of Louisiana

- Lafayette Consolidated Government

State of Maryland

- Frederick County

State of Mississippi

- Desoto County
- Forrest County
- Grenada County
- Lamar County

State of Missouri

- Boone County

State of Montana

- Silver Bow

State of Ohio

- Clermont County
- Hamilton County

State of South Carolina

- Charleston County
- Berkeley County
- Dorchester County

State of Utah

- Davis County

State of Wyoming

- Campbell County
- Natrona County
- Sheridan County
- Sweetwater County
- Uinta County

Per diem rates are published on the Internet at *http://www.gsa.gov/perdiem* as an FTR Per Diem Bulletin and published in the **Federal Register** on a periodic basis. This process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: March 20, 2007.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

[FR Doc. E7–5481 Filed 3–23–07; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 72 FR 4514, dated January 31, 2007) is amended to reflect the reorganization of Office of Workforce and Career Development, Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in their entirety the functional statements for the *Office of Workforce and Career Development (CAL), Office of the Director (CA), Centers for Disease Control and Prevention (C),* and insert the following:

Office of Workforce and Career Development (CAL). (1) Develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (2) plans, directs, and manages CDC-wide training programs and internship and fellowship programs; (3) provides consultation, technical assistance, and training on epidemiology, public health informatics, and prevention effectiveness to CDC/ATSDR, States, other agencies, other countries, and domestic and international organizations; (4) develops, designs and implements an accredited comprehensive strategic human resource leadership development and career management program for all occupational series throughout CDC; provides technical assistance in organizational development, career management, employee development, and training; (5) maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives to assist CDC employees in achieving required competencies; (6) assists in the definition and analysis of training needs of public health workers, and develops and evaluates instructional products designed to meet those needs; (7) works with partners, internally and externally, to develop a strategic vision for the public health workforce; (8) collaborates with CDC partners to develop workforce goals for all of CDC/ATSDR; (9) coordinates the Excellence in Learning Council to coordinate, inform, and share strategic vision for all of CDC's Coordinating Centers/Coordinating Offices (CC/CO); (10) conducts internal succession planning, forecasting services, and environmental scanning to ascertain both current and future public health workforce needs; (11) provides leadership, oversight, and guidance in the management and operations of OWCD's programs; (12) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director (OD), CC/CO)s, domestic and international agencies and organizations; and (13) provides a focus for short- and long-term planning within OWCD.

Office of the Director (CAL1). (1) Provides leadership and overall direction for OWCD; (2) develops goals and objectives, and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) plans, coordinates, and develops research plans for OWCD; (4) provides overall scientific leadership and advice including but not limited to OWCD Institutional Review Board activities; (5) ensures adherence and provides training to OWCD on CDC and HHS science-related policies; (6) oversees and manages OWCD clearance process for scientific and technical documents; (7) uses modeling and forecasting tools for workforce planning and decision making; (8) coordinates all program reviews; (9) reviews, prepares, coordinates, and develops proposed legislation, Congressional testimony, and briefing materials; (10) assists OWCD programs in establishing performance metrics and coordinates quarterly reviews with programs to ascertain status on meeting of the metrics; (11) coordinates OWCD budget formulation/negotiation related to program initiatives and goals

management; (12) identifies relevant scanning/benchmarking on workforce and career development processes, services and products; (13) provides leadership and guidance on new developments and national trends for public health workforce; (14) establishes policies governing major learning initiatives and new learning activities, and works collaboratively within OWCD and other components of CDC in planning, developing and implementing policies related to training initiatives, including but not limited to, Individual Learning Accounts, Individual Development Plans, and loan repayment programs; (15) provides a neutral advocate and avenue for employees to raise issues and concerns at CDC and works toward understanding, mediation and resolution of disputes between employees and management utilizing Ombudsman services; (16) develops unified OWCD-wide administrative systems and advocates and supports the commitment of resources to application development; (17) coordinates management information systems and analyses of data for improved utilization of OWCD resources; and (18) directs systems analysis and design, programming, and systems training as it relates to implementation of new and existing administrative, management, and executive information systems.

Business Services Activity (CAL13). (1) Provides leadership, oversight, and guidance in the management and operations of OWCD's programs; (2) plans, coordinates, and provides administrative management support, advice, and guidance to OWCD, involving the areas of fiscal management, personnel, travel, and other administrative services; (3) coordinates the development of the OWCD annual budget request; (4) conducts management analyses of OWCD programs and staff to ensure optimal utilization of resources and accomplishment of program objectives; (5) plans, allocates, and monitors OWCD resources; (6) maintains liaison and collaborates with other CDC components and external organizations in support of OWCD management and operations; (7) works closely with other Federal agencies involved with OWCD interagency agreements; (8) coordinates OWCD requirements relating to procurement, grants, cooperative agreements, materiel management, and interagency agreements; (9) provides fiscal management and stewardship of grants, contracts, and cooperative agreements; and (10) develops and implements administrative policies, procedures, and operations, as appropriate for OWCD, and prepares special reports and studies, as required, in the administrative management areas.

Career Development Division (CALC). (1) Plans, directs, and manages CDC-wide training and service programs for the teaching and training of public health professionals in applies epidemiology and other public health sciences including preventive medicine, public health informatics, prevention effectiveness, and public health program planning, implementation, and evaluation; (2) plans, directs, and manages CDC-wide training and service programs for fellowships and internships sponsored by other partner organizations and implemented within CDC (CDC Experience, Hubert Fellowship in International Health, Emerging Leaders Program and Presidential Management Fellowship); (3) responds to domestic and international requests for assistance and consultation; (4) works with partner agencies to articulate and build curriculum for public health workforce competencies; (5) maintains liaison with other governmental agencies, academic institutions and organizations, State and local health agencies, private health organizations, professional organizations, and other outside groups; (6) assumes an active national and international leadership role in public health training; and (7) in carrying out the above functions, collaborates, as appropriate, with the CDC OD, other CC/COs, and domestic and international agencies.

Office of the Director (CALC1). (1) Provides leadership, direction, coordination, and management oversight to the activities of the division; (2) develops long-range plans, sets annual objectives, monitors progress, and evaluates results; (3) sets policies and procedures; (4) plans, allocates, and monitors resources; (5) coordinates with the OWCD/OD, the Atlanta Human Resources Center (AHRC), the Procurement and Grants Office, and the Financial Management Office on administrative guidance and oversight in the areas of personnel, travel, and other administrative services; (6) coordinates collaborative activities of the division and maintains liaison with other national centers (NC), other Federal agencies, and other outside groups; and (7) manages several smaller fellowship programs: Public Health Informatics Fellowship Program; CDC Experience; epi-elective programs.

Epidemic Intelligence Service Branch (CALCB). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (2) develops and maintains a strategic plan for officer recruitment, analyzes data to more effectively target recruitment efforts, and conducts recruitment in accordance with the CDC workforce diversity goals; (3) plans, directs, and coordinates the application, interview, selection, and assignment processes for new Epidemic Intelligence Service (EIS) officers; (4) plans, directs, coordinates, and conducts training and training activities for EIS officers in applied epidemiology and public health practice; (5) monitors the completion of program requirements by EIS officers; (6) maintains liaison with supervisors of EIS officers, and evaluates EIS assignments within CDC; (7) coordinates the assignment and deployment of EIS officers in response to natural disasters, terrorist events, and other large scale public health emergencies; (8) reviews and approves requests for epidemiologic assistance (EPI–AIDs) from domestic and international sources and authorizes the expenditures of funds to support such requests; (9) maintains liaison with alumni within and outside CDC to assist with recruitment and promotional activities; and (10) plans, directs, and coordinates the Epidemiologic Elective Program for medical and veterinary students.

Leadership and Management Programs Branch (CALCC). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of leadership/management program activities, including, but not limited to, Presidential Management Fellows and Emerging Leaders Program; (2) develops and maintains a strategic plan for recruitment, analyzes data to more effectively target recruitment efforts, and conducts recruitment in accordance with the CDC workforce diversity goals; (3) plans, directs, and coordinates the CDC application, interview, selection, and assignment processes for fellows in accordance with OPM/HHS policies; (4) plans, directs, coordinates, and/or conducts training and training activities for fellows in the respective leadership and management competency domains outlined by OPM/HHS; (5) monitors the completion of program requirements by fellows; (6) provides guidance and supervision to fellows assigned to NCs, other Operating Divisions (OpDivs), and State and local health agencies; (7) monitors and evaluates the quality of assignments through site visits and by maintaining liaison with supervisors of fellows within CDC, other OpDivs, state and local health agencies, and other sponsoring organizations; (8) acts as a liaison to OPM/HHS steering committees/advisory groups charged

with advising on policy matters concerning the program; and (9) maintains liaison with alumni within and outside CDC to assist with recruitment and promotional activities.

Public Health Prevention Services Branch (CALCD). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (2) develops and maintains a strategic plan for Public Health Prevention Service (PHPS) fellow recruitment, analyzes data to more effectively target recruitment efforts, and conducts recruitment in accordance with the CDC workforce diversity goals; (3) plans, directs, and coordinates the application, interview, selection, and assignment processes for new PHPS fellows; (4) plans, directs, coordinates, and conducts training and training activities for PHPS fellows in public health program management, including the development, implementation, and evaluation of public health programs and interventions; (5) monitors the completion of program requirements by PHPS fellows; (6) provides guidance and supervision to PHPS fellows assigned to NCs, State and local health agencies and other sponsoring organizations; (7) monitors and evaluates the quality of assignments through site visits and by maintaining liaison with supervisors of PHPS fellows within CDC, State and local health agencies, and other sponsoring organizations; (8) coordinates provides staff support to a steering committee/advisory group charged with advising on policy matters concerning the program; and (9) maintains liaison with alumni within and outside CDC to assist with recruitment and promotional activities.

EIS Field Assignments Branch (CALCE). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (2) provides individual training and consultations in applied epidemiology and biostatistics; technical and scientific oversight of projects, presentations and manuscripts; and administrative support for EIS officers assigned to State and local health departments, and other sponsoring institutions in the field; (3) monitors field EIS officer projects for adherence to CDC human subjects guidelines; (4) coordinates field training activities for field EIS officers; (5) monitors the completion of EIS program requirements and evaluates the performance of field EIS officers; (6) monitors and evaluates the quality of field assignments through site visits and regular communications with field supervisors in State and local health departments and other sponsoring organizations; (7) participates in recruitment, interviewing, placement, teaching and training activities for all EIS officers; (8) provides coordination role between State and local health departments and other components of CDC during multi-State disease outbreak investigations; (9) helps State and local health department officials to get timely and appropriate CDC assistance; (10) provides consultations with State and local health departments, and other CDC programs, on establishment and maintenance of epidemiology programs; and (11) serves as a liaison between EIS and health departments and public health organizations.

Prevention Effectiveness and Health Economics Branch (CALCG). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (2) develops and maintains a strategic plan for Prevention Effectiveness (PE) fellow recruitment, analyzes data to more effectively target recruitment efforts, and conducts recruitment in accordance with the CDC workforce diversity goals; (3) plans, directs, and coordinates the application, interview, selection, and assignment processes for new PE fellows (4) maintains liaison with alumni within and outside CDC to assist with recruitment and promotional activities; (5) plans, directs, coordinates, and conducts training and training activities for PE fellows; (6) monitors the completion of program activities by PE fellows; (7) monitors and evaluates the quality of assignments through site visits and by maintaining liaison with supervisors of PE fellows within CDC; (8) promotes capacity in the public health community to conduct and use economic and decision analysis; (9) provides economic technical assistance and training, consultation, direction, review and information resources to other organizational units within OWCD; (10) plans, directs, coordinates and conducts continuing education programs in economics and decision science for CDC employees; and (11) supports CDC's Health Economics Research Group.

Preventive Medicine Residency Branch (CALCH). (1) Operates and maintains an accredited preventive medicine residency program for physicians in the CDC through the Accreditation Committee on Graduate Medical Education and a complementary fellowship program for public health veterinarians; (2) establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (3) develops and maintains a strategic plan for officer recruitment, analyzes data to more effectively target recruitment efforts, and conducts recruitment in accordance with the CDC workforce diversity goals; (4) maintains liaison with alumni within and outside CDC to assist with recruitment and promotional activities; (5) recruits and places residents and fellows in assignments throughout CDC and the nation for completion of on-the-job training requirements in preventive medicine and public health; (6) supplements their on-the-job learning with selected competency-based curricula in leadership, management, policy development, and program evaluation; (7) monitors and evaluates the quality of assignments through site visits and by maintaining liaison with supervisors and other individuals ; (8) monitors and evaluates the performance of the residents and fellows; (9) serves as the focal point for requests from state and local health departments and CDC programs about the Preventive Medicine Residence (PMR) program; (10) completes all requirements to maintain accreditation of the PMR program; and (11) in partnership with other CDC programs and partners in State and local health agencies, as well as other health-related organizations, works to maintain the PMR program as a vital element of CDC's workforce development strategy.

Training Services Division (CALD). (1) Evaluates the efficiency and effectiveness of health education and training, development of training tools and implementation methods and the impact of education/training on the quality of laboratory practice; (2) incorporates principles of adult learning theory and current learning standards into the design, delivery, and evaluation of health education and training products; (3) maintains knowledge of continuing education standards to uphold national accreditations and provides guidance and consultation, incorporating principles of adult learning theory, to course developers to ensure educational activities are accredited for continuing education; (4) develops and conducts training to facilitate the timely transfer of emerging laboratory technology and standards for laboratory practice nationwide; (5) provides technical assistance, consultation, and laboratory training to improve the capacity and capability of regional health organizations and State health agencies; (6) develops and maintains decentralized training networks for the nation's laboratory professionals; (7) fosters communications to assist regional, State, and local health agencies in the

identification and utilization of laboratory resources in support of the nation's health objectives; and (8) leads content development and implementation of workforce development programs intended to increase the number of individuals choosing public health careers.

Office of the Director (CALD1). (1) Strategically develops and aligns divisional programs, projects, and activities with the OWCD vision, mission, goals, and objectives; (2) provides leadership, direction, coordination, and management oversight; (3) plans, allocates, and monitors resources; (4) provides technical assistance and consultation for programs at the national, State, regional and international levels to develop the leadership and management competencies of current and emerging public health officials; and (5) leads content development, implementation, and evaluation of workforce development programs for youth K–12 plus college level pipeline programs to increase number of individuals choosing public health careers.

Learning Standards, Design and Delivery Branch (CALDB). (1) Provides consultation, guidance, and technical assistance to managers, content developers, and learners for consistent design and delivery of education and training, (2) maintains knowledge of information technology and learning standards as they apply to health education and competency assessment to promote compliance in CDC's health education and training products; (3) leads and guides CDC programs as they adopt the learning management system within the HHS Learning Portal to deliver health education and training products that adhere to learning standards; (4) applies the principles of instructional design to design, produce, and deliver informational and instructional products; (5) incorporates principles of learning theory and current learning standards into the design and delivery of health education and training products; (6) evaluates the efficiency and effectiveness of health education and training products and their impact; (7) maintains knowledge of continuing education standards to uphold national accreditations; (8) provides accreditation guidance and consultation, incorporating principles of learning theory, to ensure educational activities are accredited for continuing education; (9) assesses need and demand for additional accreditations to support professional license and certificate needs of technical and professional staff within the health workforce; (10) implements, monitors, and maintains the CDC Training and Continuing Education Online web-based registration system; and (11) provides technical assistance and guidance to learners to ensure accreditation support.

Science Education and Laboratory Training Branch (CALDC). (1) Evaluates the efficiency and effectiveness of health education and training, development of lab training tools and implementation methods and the impact of education/training on the quality of laboratory practice; (2) designs, produces, and delivers a variety of visual materials and instructional products; (3) assists in the definition and analysis of lab training needs of public health workers, and develops and evaluates instructional products designed to meet those needs; (4) develops and maintains continuing education unit accreditation; (5) develops and conducts lab training to facilitate the timely transfer of newly emerging laboratory technology and standards for laboratory practice nationwide; (6) provides technical assistance, consultation, and training for trainers to improve the capacity and capability of regional health organizations and State health agencies to develop and maintain decentralized training networks for the nation's laboratory professionals; and (7) fosters communications to assist regional, State, and local health agencies in the identification and utilization of laboratory resources in support of the nation's health objectives.

CDC University Division (CALE). (1) Designs, develops, implements and evaluates a comprehensive strategic human resource leadership and career training and development program for all occupational series throughout CDC; (2) develops and implements strategies and activities that contribute to the agency's mission, goals and objectives; (3) maintains employee training records; (4) maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives to assist CDC employees in achieving required competencies; (5) develops and validates occupational and functional competencies and develops related training plans; (6) develops and administers intern and professional development programs, the long-term training program, and the mentoring program; (7) administers and monitors the Training and Learning Management System for compliance with the Government Employees Training Act; (8) conducts training needs assessment of CDC employees nationwide; (9) provides analysis and data to correlate individual training with corporate strategic plans; (10) develops and maintains assessment tools to identify core competency requirements for each occupational series throughout the agency; (11) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (12) develops and delivers education and training programs to meet the identified needs of the public health workforce; (13) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (14) develops and implements policies related to employee training; and (15) in carrying out the above functions, collaborates, as appropriate, with the CDC/OD, other CC/COs, DHHS, OPM and other domestic and international agencies and organizations.

Office of the Director (CALE1). (1) Plans, directs, implements, supports, and coordinates the activities of the division; (2) provides leadership and guidance in all functional areas of the CDC University; and (3) participates with division and OWCD management in program planning, policy determination, evaluations, budget and decisions concerning the division.

Strategic Workforce Development Division (CALG). (1) Works with AHRC, Office of the Chief Operating Officer, CDC Excellence in Learning Council, Workforce and Career Development Officers, and agency managers to carry out human capital management planning and development activities; (2) provides guidance and oversight on the development of policies, procedures and processes associated with agency awards; (3) coordinates development and implementation of an agency-wide strategic human capital plan; (4) establishes and monitors a human capital accountability system framework for management of strategic human capital management aligned with OPM's Human Capital Assessment and Accountability Framework and HHS' associated procedures and deliverables; (5) identifies mission-critical occupations and their associated competencies to assess potential ''gaps'' in occupations and competencies that are essential to CDC achieving its strategic goals; (6) reports progress in meeting human capital management improvement objectives associated with the President's Management Agenda, and other related government-wide human capital initiatives; (7) coordinates implementation of a succession plan for key leadership and technical positions with an emphasis on mission-critical occupations; (8)

develops an agency-wide strategic hiring plan that includes recruitment and retention strategies to facilitate hiring members of under-represented groups and those with the requisite professional/scientific skills for closing occupational series and/or competency gaps in the workforce; and (9) provides information on Commissioned Corps pay, benefits, performance management, assignments, retirement, etc., to members of the Corps and CDC management, and coordinates the Commissioned Corps promotion and award programs.

Office of the Director (CALG1). (1) Plans, directs, implements, supports, and coordinates the activities of the division; (2) provides leadership and guidance to all functional areas of the division; and (3) participates with division and OWCD management in program planning, policy determination, evaluations, budget and decisions concerning the division.

Dated: March 13, 2007.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 07–1464 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Grantee Survey.

OMB No.: 0970–0076.

Description: The LIHEAP Grantee Survey is an annual data collection activity, which is sent to grantees of the 50 states and the District of Columbia administering the Low Income Home Energy Assistance Program (LIHEAP). The survey is mandatory in order that national estimates of the sources and uses of LIHEAP funds can be calculated in a timely manner; a range can be calculated of State average LIHEAP benefits; and maximum income cutoffs for four-person households can be obtained for estimating the number of low-income households that are income eligible for LIHEAP under the State income standards.

The need for the above information is to provide the Administration and Congress with fiscal estimates in time for hearings about LIHEAP appropriations and program performance. The information also is included in the Department's annual LIHEAP Report to Congress. Survey information also will be posted on the Office of Community Services' LIHEAP Web site for access by grantees and other interested parties.

Respondents: 50 states and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Grantee Survey	51	1	3.5	178.50

Estimated Total Annual Burden Hours: 178.50.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports clearance Officer. E-mail address: *infocolleciton@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 20, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–1461 Filed 3–23–07; 8:45 am]

BILLING CODE 4184–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Resettlement Program Estimates: CMA, ORR–1.

OMB No. 0970–0030.

Description: The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-Federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses in the administration of the Refugee Resettlement Program. ORR needs sound State estimates of likely expenditures for refugee cash, medical, and administrative (CMA) expenditures so that it can anticipate Federal costs in upcoming quarters. If Federal costs are anticipated to exceed budget allocations, ORR must take steps to reduce Federal expenses, such as limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance.

To meet the need for reliable State estimates of anticipated expenses, ORR has developed a single-page form in which States estimate the average number of recipients for each category of assistance, the average unit cost over the next 12 months, and the expense for the overall administration of the program. This form, the ORR–1, must be submitted prior to the beginning of each Federal fiscal year. Without this information, ORR would be out of compliance with the intent of its legislation and otherwise unable to estimate program costs adequately.

In addition, the ORR–1 serves as the State's application for reimbursement of its CMA expenses. Submission of this form is thus required by section

412(a)(4) of the Immigration and Nationality Act, which provides that ''no grant or contract may be awarded under this section unless an appropriate proposal and application * * * are submitted to, and approved by, the appropriate administering official.''

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–1	48	1	.5	24

Estimated Total Annual Burden Hours: 24.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 20, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–1462 Filed 3–23–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Uniform Project Description (UPD) for Discretionary Grant Application Form.

OMB No.: 0970–0139.

Description: The Administration for Children and Families (ACF) has more than 40 discretionary grant program. This information collection form will be a uniform discretionary application form unable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the Program Narrative requesting the applicant to describe how these objections will be reached; and certifications. Guidance for the content of information requested in the Program Narrative is found in OMB Circulars A–102 and A–110.

Respondents: Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UPD	4,133	1	40	165,320

Estimated Total Annual Burden Hours: 165,320.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for, Children and Families.

Dated: March 20, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–1463 Filed 3–23–07; 8:45 am]

BILLING CODE 4184–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0528]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Infant Formula Requirements

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 April 25, 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: 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.

Infant Formula Requirements (OMB Control Number 0910–0256)—Extension

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to establish and adhere to quality control procedures, notify FDA when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in 21 CFR part 106 and part 107 (21 CFR parts 106 and 107). FDA also regulates the labeling of infant formula under the authority of section 403 of the act (21 U.S.C. 343). Under the labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately. In a notice of proposed rulemaking published in the **Federal Register** of July 9, 1996 (61 FR 36154) (the 1996 proposed rule), FDA proposed changes in the infant formula regulations, including some of those listed in tables 1 and 2 of this document. The 1996 proposed rule included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

In the **Federal Register** of January 12, 2007 (72 FR 1539), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received. The notice incorrectly reported the ''Hours per Record'' and the ''Total Hours'' for 21 CFR 106.100 and 107.50(c)(3) in Table 2. Table 2 of this document contains the correct burden estimate.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act or 21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
Section 412(d) of the act	5	13	65	10	650
106.120(b)	1	1	1	4	4
107.10(a) and 107.20	5	13	65	8	520
107.50(b)(3) and (b)(4)	3	2	6	4	24
107.50(e)(2)	1	1	1	4	4
Total					1,202

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Manufacturers may submit infant formula notifications in electronic format.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records[2]	Hours per Record	Total Hours
106.100	5	10	50	400	20,000
107.50 (c)(3)	3	10	30	300	9,000
Total					29,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5470 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0255]

Determination That DURICEF (Cefadroxil USP) Tablets, 1 Gram, and Capsules, 500 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DURICEF (cefadroxil USP) Tablets, 1 gram (g), and Capsules, 500 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to continue to approve abbreviated new drug applications (ANDAs) for cefadroxil USP tablets, 1 g, and cefadroxil USP capsules, 500 mg.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a), the circumstances under which the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness include: (1) Before an ANDA that refers to that listed drug may be approved and (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that refer to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug. FDA may not approve an ANDA that does not refer to a listed drug.

DURICEF (cefadroxil USP) Tablets, 1 g, and Capsules, 500 mg, are the subjects of approved NDA 50–528 and NDA 50–512, respectively, held by Warner Chilcott, Inc. (Warner Chilcott). DURICEF is an antibiotic indicated to treat infections of the urinary tract, skin, throat, and tonsils, caused by specific bacteria, including streptococci, staphylococci, and *Escherichia coli*. Warner Chilcott has informed FDA that DURICEF (cefadroxil USP) Tablets 1 g, and Capsules, 500 mg, have been withdrawn from sale.

In a citizen petition dated June 13, 2006 (Docket No. 2006P–0255/CP1), submitted under 21 CFR 10.30, Orchid Healthcare (a division of Orchid Chemicals & Pharmaceuticals Ltd.) requested that the agency determine whether DURICEF (cefadroxil USP) Tablets, 1 g, were withdrawn from sale for reasons of safety or effectiveness. In addition, there are approved ANDAs that refer to DURICEF (cefadroxil USP) Tablets, 1 g, and Capsules, 500 mg.

The agency has determined that Warner Chilcott's DURICEF (cefadroxil USP) Tablets, 1 g, and Capsules, 500 mg, were not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that DURICEF Tablets, 1 g, and Capsules, 500 mg, were withdrawn from sale for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse events and has found no information that would indicate that either DURICEF Tablets, 1 g, or Capsules, 500 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that, for the reasons outlined in this document, DURICEF (cefadroxil USP) Tablets, 1 g, and Capsules, 500 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list DURICEF (cefadroxil USP) Tablets, 1 g, and Capsules, 500 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. Approved ANDAs that refer to DURICEF cefadroxil USP) Tablets, 1 g, and Capsules, 500 mg, are unaffected by the withdrawal of these products from sale. ANDAs that refer to cefadroxil USP (tablets, 1 g, and cefadroxil USP capsules, 500 mg, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs.

Dated: March 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5415 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0240]

Determination of Regulatory Review Period for Purposes of Patent Extension; REVLIMID

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REVLIMID and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product REVLIMID (lenalidomide). REVLIMID is indicated for treatment of patients with transfusion-dependent anemia due to Low- or Intermediate-1-risk myelodysplastic syndromes associated with a deletion 5q cytogenetic abnormality with or without additional cytogenetic abnormalities. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REVLIMID (U.S. Patent No. 5,635,517) from Celgene Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 14, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of REVLIMID represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REVLIMID is 2,069 days. Of this time, 1,804 days occurred during the testing phase of the regulatory review period, while 265 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: April 30, 2000. The applicant claims May 1, 2000, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 30, 2000, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 7, 2005. FDA has verified the applicant's claim that the new drug application (NDA) for REVLIMID (NDA 21–880) was initially submitted on April 7, 2005.

3. *The date the application was approved*: December 27, 2005. FDA has verified the applicant's claim that NDA 21–880 was approved on December 27, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,166 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 25, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 24, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5439 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0034]

Determination of Regulatory Review Period for Purposes of Patent Extension; PREVICOX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PREVICOX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a

patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA approved for marketing the animal drug product PREVICOX (firocoxib). PREVICOX is indicated for control of pain and inflammation associated with osteoarthritis in dogs. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PREVICOX (U.S. Patent No. 5,981,576) from Merck Frosst Canada & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 14, 2006, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of PREVICOX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PREVICOX is 2,216 days. Of this time, 2,118 days occurred during the testing phase of the regulatory review period, while 98 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(j)) involving this animal drug product became effective*: June 29, 1998. FDA has verified the applicant's claim that the date the investigational new animal drug application (INAD) became effective was on June 29, 1998.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the act*: April 15, 2004. FDA has verified the applicant's claim that the new animal drug Application (NADA) for PREVICOX (NADA 141–230) was initially submitted on April 15, 2004.

3. *The date the application was approved*: July 21, 2004. FDA has verified the applicant's claim that NADA 141–230 was approved on July 21, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 650 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 25, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 24, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions are to be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5443 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0046]

Determination of Regulatory Review Period for Purposes of Patent Extension; ONYX LES

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ONYX LES and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to*http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The

approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device ONYX LES. ONYX LES is indicated for presurgical embolization of brain arteriovenous malformations. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ONYX LES (U.S. Patent No. 5,667,767) from Micro Therapeutics, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 14, 2006, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of ONYX LES represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ONYX LES is 1,682 days. Of this time, 825 days occurred during the testing phase of the regulatory review period, while 857 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective*: December 14, 2000. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective December 14, 2000.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: March 18, 2003. The applicant claims March 12, 2003, as the date the premarket approval application (PMA) for ONYX LES (PMA P030004) was initially submitted. However, FDA records indicate that PMA P030004 was submitted on March 18, 2003.

3. *The date the application was approved*: July 21, 2005. FDA has verified the applicant's claim that PMA P030004 was approved on July 21, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,271 days of patent term extension.

Anyone with knowledge that any of the dates are published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 25, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 24, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5444 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0478]

Determination of Regulatory Review Period for Purposes of Patent Extension; NOVOLOG

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NOVOLOG and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product NOVOLOG (insulin aspart (rDNA origin)). NOVOLOG is indicated for the treatment of adult patients with diabetes mellitus, for the control of hyperglycemia. Subsequent to this

approval, the Patent and Trademark Office received a patent term restoration application for NOVOLOG (U.S. Patent No. 5,618,913) from Novo Nordisk A/S, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 12, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NOVOLOG represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NOVOLOG is 1,776 days. Of this time, 1,145 days occurred during the testing phase of the regulatory review period, while 631 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: July 30, 1995. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 30, 1995.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 16, 1998. The applicant claims September 15, 1998, as the date the new drug application (NDA) for NOVOLOG (NDA 20–986) was initially submitted. However, FDA records indicate that NDA 20–986 was submitted on September 16, 1998.

3. *The date the application was approved*: June 7, 2000. FDA has verified the applicant's claim that NDA 20–986 was approved on June 7, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 59 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 25, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 24, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5445 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0259]

Determination of Regulatory Review Period for Purposes of Patent Extension; EMTRIVA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EMTRIVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EMTRIVA (emtricitabine). EMTRIVA is indicated, in combination with other antiretroviral agents, for the treatment of HIV–1 infection in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EMTRIVA (U.S. Patent No. 5,914,331) from Emory University, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EMTRIVA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EMTRIVA is 2,114 days. Of this time, 1,811 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 19, 1997. The applicant claims September 20, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 19, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 3, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for EMTRIVA (NDA 21–500) was initially submitted on September 3, 2002.

3. *The date the application was approved*: July 2, 2003. FDA has verified the applicant's claim that NDA 21–500 was approved on July 2, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 642 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 25, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 24, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 26, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5446 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 24, 2007, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850, 240–276–3676, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations and vote on a premarket approval application (PMA) for the Scandinavian Total Ankle Replacement System, sponsored by Link America, Inc. This system is intended for use as a noncemented implant to replace a painful arthritic and/or severely deformed ankle due to rheumatoid arthritis, primary arthrosis, or posttraumatic arthrosis.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at*http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 10, 2007. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 2, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 3, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–827–7292, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–5469 Filed 3–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program Deferment Request Forms and Associated Reporting Requirements (OMB No. 0915–0179): Extension

The National Health Service Corps (NHSC) Scholarship program was established to assure an adequate supply of trained primary care health professionals to the neediest communities in Health Professional Shortage Areas (HPSAs) of the United States. Under the program, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC program, students of other health professions enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated HPSA.

Once the scholars have met their academic requirements, the law requires that individuals receiving a degree from a school of medicine or osteopathic medicine must (and all others may) request a deferment of their service obligation to complete approved internship, residency or other advanced nursing training consistent with the needs of the NHSC. The Deferment Request Form and Letter of Intent and Request provide the information necessary for considering the period and type of training for which deferment of the service obligation is requested.

The annual estimate of burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Deferment Request Form	600	1	600	1	600
Letters of Intent and Request	100	1	100	1	100
Total	700		700		700

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 19, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–5414 Filed 3–23–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Rapid Universal and/or Type-Specific Assay for Clostridium Botulinum

Description of Technology: The urgent need for a rapid diagnostic test capable of detecting all serotypes of C. botulinum is well known. Botulinum neurotoxins (BoNTs) are the most potent biological toxins known and are categorized as category A biodefense agents because of lethality and ease of production. Current diagnostic methods include clinical observation of symptoms that could be mistaken for other neurological conditions and a mouse protection bioassay that takes as long as four days and has a number of disadvantages. The subject technology utilizes unique PCR primers for the detection of the non-toxin non-hemaglutinin (NTNH) gene of C. botulinum; this gene is highly conserved in all C. botulinum toxin types and subtypes. Thus, samples that contain botulinum can be determined regardless of serotype involved, providing a universal means of diagnosis. Further, the technology describes different PCR primers and flurogenic probes for a BoNT-specific assay. The type-specific assay can be used independently or in conjunction with the universal assay described above. The universal and type-specific assays were successfully used first to

identify positively botulinum DNA samples in a test of botulinum and non-botulinum clostridia species then to determine the toxin type. The diagnostic testing described by the subject technology requires significantly less time than the current gold standard diagnostic test.

Applications: (1) Universal diagnostic test for C. botulinum; (2) Diagnostic test for C. botulinum capable of detecting all seven toxin types; (3) Combination diagnostic.

Development Status: Fully developed.

Inventors: Daniel C. Douek (VRC/NIAID) *et al.*

Patent Status: U.S. Provisional Application No. 60/884,539 filed 11 Jan 2007 (HHS Reference No. E–046–2007/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

Methods and Compositions for Protecting Cells From Ultrasound-Mediated Cytolysis

Description of Invention: Available for licensing and commercial development are methods for protecting cells from ultrasound-mediated cytolysis. The in vitro exposure of cells to ultrasound and the therapeutic uses of ultrasound (*e.g.*, sonoporation, thrombolysis, HIFU, sonophoresis, acoustic hemostasis) may induce changes in tissue state, including apoptosis and cytolysis, through thermal effects (*e.g.*, hyperthermia), mechanical effects (*e.g.*, acoustic cavitation or through radiation force, acoustic streaming and other ultrasound induced forces), and chemical effects (via sonochemistry or by the activation of solutes by sonoluminescence). Ultrasound exposure conditions in these biomedical and in biological processes (*e.g.* ultrasound bioreactors) are limited by the need to increase the beneficial effects of ultrasound, while at the same time limiting the detrimental effects, such as apoptosis and cytolysis. Accordingly, the protecting molecules used to carry out the methods of the invention possess the ability to protect cells against ultrasound mediated cytolysis, without hindering ultrasound induced physical effects that could be utilized to create beneficial effects. The protecting solutes are surface active and possess at least one ''carbohydrate unit'' as described. The solutes include, but are not limited to: alkyl-β-D-thioglucopyranoside, alkyl-β-D-thiomaltopyranoside, alkyl-β-D-galactopyranoside, alkyl-β-D-thiogalactopyranoside, or alkyl-β-D-maltrioside, hexyl-β-D-glucopyranoside, heptyl-β-D-glucopyranoside, octyl-β-D-glucopyranoside, nonyl-β-D-glucopyranoside, hexyl-β-D-maltopyranoside, n-octyl-β-D-maltopyranoside, n-octyl-β-D-thioglucopyranoside, 2-propyl-1-pentyl-β-D-maltopyranoside, methyl-6-O-(N-heptylcarbamoyl)-α-D-glucopyranoside, 3-cyclohexyl-1-propyl-β-D-glucoside, 6-O-methyl-n-heptylcarboxyl-α-D-glucopyranoside.

Inventors: Joe Z. Sostaric (NCI), Peter Riesz (NCI), *et al.*

Publications:

1. Joe Z. Sostaric, Norio Miyoshi, Peter Riesz, William G. DeGraff and James B. Mitchell. n-Alkyl glucopyranosides completely inhibit ultrasound-induced cytolysis. Free Radic Biol Med. 2005 Dec 15;39(12):1539–1548.
2. Joe Z. Sostaric, Norio Miyoshi, Peter Riesz, William G. Degraff and James B. Mitchell. Complete inhibition of ultrasound-induced cytolysis in the presence of inertial cavitation. AIP Conf Proc. 2006 May 8;829:39–43.

Patent Status: PCT Application No. PCT/US2005/037912 filed 19 Oct 2005, which published as WO 2006/045050 on 27 Apr 2006; claiming priority to 19 Oct 2004 (HHS Reference No. E–311–2004/0–PCT–02).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michael Shmilovich, Esq.; 301/435–5019; *shmilovm@mail.nih.gov.*

Dated: March 12, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–5426 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Shared Resource Grant (R24).

Date: April 23, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keary A. Cope, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 3.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 12, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1450 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Disease Research Project.

Date: April 12, 2007.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 208892–7924, 301–435–0280, *pattonh@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 12, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1451 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: May 23–24, 2007.

Closed: May 23, 2007, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: May 24, 2007, 9 a.m. to 3:30 p.m.

Agenda: Program Reports and Presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 12, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1447 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Developmental/Exploratory Research Center Applications.

Date: April 4, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluation grant applications.

Place: National Institute on Alcohol Abuse & Alcoholism, 5635 Fishers Lane, Room 3039, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Branch Review, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Developmental/Exploratory Alcohol Center Grant Applications Review RFA–AA–07–001.

Date: April 20, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Branch Review, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Developmental/Exploratory Alcohol Center Grant Application Review RFA AA–07–001.

Date: April 26, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Branch Review, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 12, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1448 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, EE91 Special Emphasis Panel (SEP).

Date: April 16–17, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Crowne Plaza Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Katrina Foster, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 3037, Rockville, MD 20852, 301–443–3037, katrina@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 12, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1449 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 19, 2007, 8 a.m. to March 21, 2007, 10 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 7, 2007, 72 FR 10234–10235.

The meeting will be held April 16, 2007 to April 18, 2007. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 12, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1446 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell Biology.

Date: March 29–30, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urology Applications.

Date: April 4, 2007.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–GM–07–001 Structural Biology of HIV/Host Cell Complexes.

Date: April 9–10, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exercise.

Date: April 10, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: March 8, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1452 Filed 3–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): National Customs Automation Program Test of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next group, or cluster, of ports to be deployed for this test.

DATES: Ports identified in this notice, in the states of New Hampshire and Maine,

are expected to be fully deployed for testing by March 19, 2007. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period to the contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at *james.d.swanson@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004.

A series of **Federal Register** notices have announced the implementation of the test, beginning with a notice published on May 31, 2005 (70 FR 30964). As described in that document, the deployment sites for the test have been phased in as clusters. The ports identified belonging to the first cluster were announced in the May 31, 2005 notice. Additional clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on October 14, 2005; 71 FR 3875, published on January 24, 2006; 71 FR 23941, published on April 25, 2006; 71 FR 42103, published on July 25, 2006; 71 FR 77404, published on December 26, 2006; and 72 FR 7058, published on February 14, 2007.

New Clusters

Through this notice, CBP announces that the next clusters of ports to be brought up for purposes of deployment of the test, to be fully deployed by March 19, 2007, will be the port of Pittsburg in the state of New Hampshire and the following specified ports in the state of Maine: Ferry Point, Milltown, Eastport, Lubec, Vanceboro, Forest City, Orient, Houlton, Monticello, Van Buren, Hamlin, Madawaska, Fort Kent, Estcourt, Limestone, Jackman, Coburn Gore, St. Zacharie, St. Aurelie, St. Pamphile, St. Juste, Fort Fairfield, Easton, and Bridgewater.

This deployment is for purposes of the test of the transmission of automated truck manifest data only; the Automated Commercial Environment (ACE) Truck Manifest System is not yet the mandated transmission system for these ports. The ACE Truck Manifest System will become the mandatory transmission system in these ports only after publication in the **Federal Register** of 90 days notice, as explained by CBP in the **Federal Register** notice published on October 27, 2006 (71 FR 62922).

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: March 15, 2007.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E7–5436 Filed 3–23–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

New Test Program Regarding Electronic Foreign Trade Zone Admission Applications

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: In a document published in the **Federal Register** on August 19, 2005, the Bureau of Customs and Border Protection (CBP) announced its plan to conduct a voluntary program to test the viability of submitting electronic FTZ admission applications (CBP Form 214—''FTZ Admission and/or Status Designation'') to CBP via the Automated Broker Interface (ABI). The test program was intended to run for a period of approximately 6 months from the program's September 30, 2005 commencement date with a final evaluation to take place at the end of that period. This notice informs interested members of the public that after CBP's initial evaluation of the test program, it was determined that due to the insufficient data collected the test should be run again for a period of approximately 6 months from March 26, 2007. The new test program is intended to encourage greater participation in the prototype by the trade and thereby provide CBP with more meaningful data by which to assess the feasibility of implementing the test program on a permanent basis.

DATES: The Electronic FTZ Admission Application test program will resume for a period of 6 months from March 26, 2007. CBP may extend the test for additional periods of time by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the prototype may be submitted at any time during the test period.

ADDRESSES: Written comments regarding this notice should be addressed to Customs and Border Protection, Office of Field Operations, Cargo Control Branch, 1300 Pennsylvania Avenue, NW., Room 5.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Sonja Grant, Customs and Border Protection, Office of Field Operations, via e-mail at *sonja.grant@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Electronic Foreign Trade Zone Admission Application Test Program: Planned Component of the National Customs Automation Program

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of Title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial importations. Within subpart B, section 631 of the Act added section 411 to the Tariff Act of 1930 (19 U.S.C. 1411–1414), which defines the NCAP, provides for the establishment of and participation in the NCAP, and includes a list of existing and planned components. Section 411(a)(2)(G) identifies any program initiated by Customs and Border Protection to carry out the automation goals of this subpart as a planned NCAP component. The planned test program described in this document falls within this category of planned NCAP component. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP planned components. The Electronic Foreign Trade Zone (FTZ) Admissions Application prototype is being tested in accordance with this provision.

Description of the Test Program

A notice describing the Electronic FTZ Admissions Application test program and setting forth the program's terms and conditions was published in the **Federal Register** (70 FR 48774) on August 19, 2005. The voluntary test program permitted the electronic filing of FTZ admission applications (CBP Form 214—''FTZ Admission and/or Status Designation'') with CBP via the Automated Broker Interface (ABI). That document stated that the test program was to commence no earlier than September 30, 2005, and continue to run for a period of approximately 6 months with a final evaluation to take place at the end of that period.

This notice informs interested members of the public that after CBP's initial evaluation of the test program, it was determined that due to the insufficient data collected the test should be run again for a period of approximately 6 months from March 26, 2007. The new test program is intended to encourage greater participation in the prototype by the trade and thereby provide CBP with more meaningful data by which to assess the feasibility of implementing the test program on a permanent basis. A final evaluation will take place at the end of the test period.

All of the Electronic FTZ Admissions Application test program terms and conditions set forth in the August 19, 2005, **Federal Register** notice will be in effect.

Dated: March 15, 2007.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E7–5431 Filed 3–23–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–26]

Notice of Submission of Proposed Information Collection to OMB; Uniform Physical Standards & Physical Inspection Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Multifamily properties owned by HUD or with HUD-insured mortgages must be inspected regularly. Mortgagees/lenders inspect projects with HUD-insured mortgages. All owners/agents must certify that Exigent Health and Safety (EH&S) deficiencies noted during the inspection have been repaired. HUD uses the information to ensure that the properties are maintained in a condition that is decent, safe, sanitary, and in good repair.

DATES: *Comments Due Date:* April 25, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0369) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Uniform Physical Standards & Physical Inspection Requirements.

OMB Approval Number: 2502–0369.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Multifamily properties owned by HUD or with HUD-insured mortgages must be inspected regularly. Mortgagees/lenders inspect projects with HUD-insured mortgages. All owners/agents must certify that Exigent Health and Safety (EH&S) deficiencies noted during the inspection have been repaired. HUD uses the information to ensure that the properties are maintained in a condition that is decent, safe, sanitary, and in good repair.

Frequency of Submission: On occasion, Other (every 3 years).

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12,857	0.99		3		38,824

Total Estimated Burden Hours: 38,824.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 20, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–5408 Filed 3–23–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5123–N–07]

Notice of Proposed Information Collection for Public Comment on the Survey of Market Absorption of New Multifamily Units

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 25, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik, Director, Housing and Demographic Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The telephone number is (202) 402–5887. This is not toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Sepanik.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection of information to (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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Survey of Market Absorption of New Multifamily Units.

OMB Control Number: 2528–0013 (Expires 11/30/2007).

Description of the need for the information and proposed use: The Survey of Market Absorption (SOMA) provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed; that is, taken off the market, usually by being rented or sold, over the course of the first twelve months following completion of a building. The data are collected at quarterly intervals until the twelve months conclude, or until the units in a building are completely absorbed. The survey also provides estimates of certain characteristics, *i.e.*, asking rent/price, number of units, and number of bedrooms. The survey provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public. Additionally, beginning with new construction in 2002, the survey will attempt to ascertain the number and degree of services provided by ''Assisted Living'' type units.

Members of affected public: Rental Agents/Builders.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Estimated Number of Respondents: 12,000 yearly (maximum).

Estimated Time per Response: 20 minutes.

Frequency of Response: Four times (maximum).

Estimated Total Annual Burden Hours: 4,000 (12,000 × 20 minutes).

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Authority: The survey is taken under Title 12, United States Code, Section 1701Z.

Dated: March 16, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E7–5411 Filed 3–23–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5133–N–01]

Mortgage and Foreclosure Rights of Servicemembers Under the Servicemembers Civil Relief Act: Informational Notice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice provides information regarding the homeowner notification requirement of section 106(c)(5) of the Housing and Urban Development Act of 1968. The Servicemembers Civil Relief Act (SCRA) provides legal rights and protections that are applicable to the debts of servicemembers and their dependents. Notice is to be provided to all homeowners who are in default in order to inform them of mortgage and foreclosure rights available to them under the SCRA if they are servicemembers or dependents of servicemembers. HUD has developed, in consultation with the Departments of Defense and Treasury, a final disclosure form to be used by mortgagees for fulfilling this notice requirement. HUD made the form available on its website in July 2006, and the form is also attached as an appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Leslie Bromer, Mortgage Servicing Specialist, Asset Management and Disposition Division, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9180, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Individuals with speech or hearing challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Questions regarding this notice may also be directed to the National Servicing Center in Oklahoma City, Oklahoma, at (888) 297–8685.

Individuals with speech or hearing challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Servicemembers Civil Relief Act (50 U.S.C. app. 501 *et seq.*) (SCRA) provides various protections to active duty military members and reservists, or members of the National Guard called to active duty, and, in limited situations, dependents of military members. The SCRA is intended to ease the economic and legal burdens on military personnel by postponing, suspending, or mitigating obligations, such as mortgage payments and foreclosure actions. Section 688 of the National Defense Authorization Act for Fiscal Year (FY) 2006 (Pub. L. 109–163, approved January 6, 2006) (NDAA) amended the required content of notifications of homeownership counseling availability under section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) and directed HUD to issue a final disclosure form to be used by mortgagees in fulfilling the notice requirement.

II. HUD Notice of Servicemembers Rights Under SCRA

Pursuant to the NDAA amendment, HUD has developed, in consultation with the Departments of Defense and Treasury, the final disclosure form for the required notice of servicemember rights. The form is located in the appendix to this notice. The form was also earlier made available on HUD's Web site in July 2006 and can be found at *http://www.hudclips.org/sub_nonhud/html/pdfforms/92070.pdf*. All mortgage loans, including conventional mortgages and mortgages insured by HUD, are subject to the notification requirement. The notice is required to: (1) Be sent to all homeowners who are in default on a residential mortgage; (2) include the toll-free Military OneSource number (800–342–9647) to call if servicemembers or their dependents require further assistance; and (3) be made within 45 days from the date a missed payment was due, unless the homeowner pays the overdue amount before the expiration of the 45-day period.

III. Rights and Protections Under the SCRA

The SCRA provides, among other things, that a debt incurred by a servicemember, or by a servicemember jointly with a spouse, prior to entering military service, shall not bear interest at a rate above six percent during the period of military service. (See section 207(a)(1) of SCRA.) Servicemembers become eligible for the interest rate limitation by providing to the creditor with written notice, a copy of the military orders calling the servicemember to active duty, and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service. (See section 207(b)(1) of SCRA.) Upon receipt, the creditor must limit interest on the obligation to no more than six percent per year, effective as of the date on which the servicemember is called to military service. (See section 207(b)(2) of SCRA.) Only a court may grant the creditor an exception to the interest rate limitation, which may only be granted if in the opinion of the court the ability of the servicemember to pay interest on the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the servicemember's military service. (See section 207(c) of SCRA.)

In a legal action to enforce a debt against real estate that is filed during, or within 90 days after the servicemember's military service, a court may stay the proceedings for a period of not less than 90 days or may adjust the debt. (See section 202(b)(1) of SCRA.) In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during or within 90 days after the servicemember's military service unless the creditor has obtained a court order approving the sale, foreclosure, or seizure of the real estate. (See section 303(c) of SCRA.)

In addition to the rights described above, the SCRA provides some additional legal protections. HUD, however, is not in a position to interpret or provide information on all of the various provisions of the SCRA as they may affect the rights afforded creditors and servicemembers. Such interpretations should be obtained for the Department of Defense or should be determined by the courts.

IV. Verification of Military Service

Creditors who are otherwise unable to verify a debtor's military status may request and obtain a statement as to military service from the Department of Defense, pursuant to section 602 of the SCRA (50 U.S.C. app. 582). To facilitate SCRA searches, the Department of Defense's Manpower Data Center (DMDC) has developed a secure public internet access system through which any requester can quickly determine whether an individual is currently in the armed forces. The Web site for SCRA queries is *http://www.dmdc.osd.mil/owa/scra/home*. The requester must provide the Social Security Number (SSN) and a last name. First name, middle name, birth year, and birth month are optional.

A report is executed by clicking the ''LookUp'' tab on the query form. If the provided SSN and other identifying information match the name of a person currently on active duty, the DMDC response report will provide the named individual's branch of military service and ''begin date'' of Active Duty status. If the provided SSN is matched to the name of a person on active duty but the last name and/or birth date entered do not match the information recorded for that individual, the DMDC response report page states, ''Based on the social security number you have provided, the individual is currently on Active Duty. However, the name or partial DOB, or both provided do not match the individual against whom the social security number is assigned.'' If the DMDC does not have information regarding whether the name of the identified person is on active duty, the response report will only list the supplied name with the text, ''Based on the information you have furnished, the DMDC does not possess any information indicating the individual is currently on active duty.''

There is no charge for the online SCRA queries and no authorization, user ID, or password is required. Requesters needing assistance may fax a request for a statement as to military service to DMDC at (703) 696–4156, or call (703) 696–6762.

V. Paperwork Reduction Act Statement

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0565. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: March 16, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

United States Department of Housing and Urban Development Servicemembers Civil Relief Act Notice

Legal Rights and Protections Under the SCRA

Servicemembers on ''active duty'' or ''active service,'' or a dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 U.S.C. App. 501, *et seq.*) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA

- Active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and active service National Guard;
- Active service members of the commissioned corps of the National and Atmospheric Administration;
- Active service members of the commissioned corps of the Public Health Service;
- United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action; and
- Dependents of the above (e.g., spouse or children).

What Legal Protections Are Servicemembers Entitled to Under the SCRA?

- The SCRA states that a debt incurred by a service member, or spouse jointly, prior to entering military service shall not bear interest at a rate above 6 percent during the period of military service.
- The SCRA states that in a legal action to enforce a debt against real estate that is filed during, or within 90 days after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 90 days after the servicemember's military service unless the creditor has obtained a court order approving the sale, foreclosure, or seizure of the real estate.

How Does a Servicemember or Dependent Request Relief Under the SCRA?

- A servicemember or dependent, or both, may request relief under the SCRA by providing the lender a written notice with a copy of the servicemember's military orders. (Note: Lender should place its name, address, and contact information here.)

How Does a Servicemember or Dependent Obtain Information About the SCRA?

- The U.S. Department of Defense's information resource is ''Military OneSource.'' Web site: *http://www.militaryonesource.com*

The toll-free telephone number for Military OneSource are:

○ From the United States: 1–800–342–9647.

○ From outside the United States (with applicable access code): 800–3429–6477.

○ International Collect (through long distance operator): 1–484–530–5908.

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for each branch of the armed forces is available at *http://legalassistance.law.af.mil/content/locator.php.*

[FR Doc. E7–5412 Filed 3–23–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Implementation Schedule for the South Florida Multi-Species Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (''we,'' ''our,'' or ''Service'') announces the availability of the Implementation schedule for the South Florida Multi-Species Recovery Plan (MSRP). The MSRP, as approved in 1999, included a discussion of the need for a coordinated effort to develop an implementation schedule. This implementation schedule was prepared with the assistance of the South Florida Multi-species/Ecosystem Recovery Implementation Team (MERIT). The implementation schedule prioritizes the recovery tasks as described in the MSRP on a community level, and identifies the associated participating parties, time frames, and costs necessary to accomplish those tasks.

ADDRESSES: Copies of the final implementation schedule can be downloaded from *http://verobeach.fws.gov* or can be obtained by contacting the Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960. We encourage requests for the CD–ROM version of the implementation schedule, as the hard (paper) copy encompasses more than 140 pages.

FOR FURTHER INFORMATION CONTACT: Cindy Schulz at the South Florida Ecological Services Office, (772) 562–3909, ext. 305.

SUPPLEMENTARY INFORMATION: On April 2, 2004, we published a notice announcing the availability of this technical/agency draft implementation schedule in the **Federal Register**, and opened a 60-day public comment period. We particularly sought comments concerning: (1) Recommended changes to the priority number for recovery tasks; (2) recommendations for additions or deletions to the participants identified for each recovery task; and (3) additional information to assist us with determining costs for accomplishing recovery tasks. Four parties provided comments on ten species. Among those were comments on recovery task priority number, participants, and cost. Comments were also received on the recovery tasks themselves. We have considered and addressed comments where appropriate in this final implementation schedule. Those comments, as well as updates by Service staff, led to this final version of the implementation schedule that differs from the technical/agency draft. The recovery tasks listed in the implementation schedule were taken directly from the MSRP. Any changes needed to the tasks themselves will be addressed in a future revision of the MSRP rather than in the implementation schedule. These changes, if any, would be subject to public comment only during such future revision.

Background

Restoring listed animals and plants to the point where they are again secure, self-sustaining components of their ecosystems is a primary goal of the Service's threatened and endangered species program. To help guide the recovery effort, we prepare recovery plans for listed species native to the United States, pursuant to section 4(f) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. *et seq.*), which requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions that may be necessary for conservation of these species, establish criteria for reclassification from endangered to threatened status or removal from the list, and estimate the time and cost for implementing the needed recovery measures.

Section 4(f) of the Act also requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. Accordingly, the MSRP was made available for public review and comment before its approval in May 1999. The MSRP identifies the recovery needs of the 68 threatened and endangered species and 23 natural communities in the south Florida ecosystem, which encompasses 67,346 square kilometers (26,002 square miles), covering the 19 southernmost counties in Florida.

The process to develop this final implementation schedule involved the collaborative effort of a team appointed by the Service to focus specifically on recovery implementation efforts in South Florida. The team, known as MERIT, is comprised of 36 members representing Federal, State, and local government agencies; Tribal governments; academia; industry, and the private sector. MERIT members assisted in assigning priorities to recovery tasks, and estimating the duration and possible cost to complete each task. They also identified organizations or agencies that would likely be involved in accomplishing each task.

The implementation schedule for the MSRP contains recovery tasks for those species that occur only in south Florida, and for which the South Florida Ecological Services Office has recovery lead. Other Service offices have recovery responsibility for those species that occur in south Florida but also occur elsewhere. Implementation schedules for those species can be found in the approved individual recovery plans for those species. Recovery tasks are provided in this implementation schedule for the following species:

Status/species	Scientific name
Mammals:	
E Key deer	*Odocoileus virginianus clavium.*
E Key Largo cotton mouse	*Peromyscus gossypinus allapaticola.*
E Key Largo woodrat	*Neotoma floridana smalli.*
E Rice rat (= silver rice rat)	*Oryzomys palustris natator* (= *O. argentatus.*)
E Lower Keys rabbit	*Sylvilagus palustris hefneri.*
Birds:	
T Audubon's crested caracara	*Polyborus plancus audubonii.*
E Cape Sable seaside sparrow	*Ammodramus* (= *Ammospiza*) *maritimus mirabilis.*
E Everglade snail kite	*Rostrhamus sociabilis plumbeus.*
E Florida grasshopper sparrow	*Ammodramus savannarum floridanus.*
Reptiles:	
PT American crocodile	*Crocodylus acutus.*
T Bluetail (blue-tailed) mole skink	*Eumeces egregius lividus.*
T Sand skink	*Neoseps reynoldsi.*
Invertebrates:	
E Schaus swallowtail butterfly	*Heraclides* (= *Papilio) aristodemus ponceanus.*
T Stock Island tree snail	*Orthalicus reses* (not incl. *nesodryas.*)
Plants:	
E Avon Park harebells	*Crotalaria avonensis.*
E Beach jacquemontia	*Jacquemontia reclinata.*
E Beautiful pawpaw	*Deeringothamnus pulchellus.*
E Carter's mustard	*Warea carteri.*
E Crenulate lead-plant	*Amorpha crenulata.*
E Deltoid spurge	*Chamaesyce* (= *Euphorbia*) *deltoidea spp. deltoidea.*
E Florida perforate cladonia	*Cladonia perforata.*
E Florida ziziphus	*Ziziphus celata.*
E Four-petal pawpaw	*Asimina tetramera.*
E Fragrant prickly-apple	*Cereus eriophorus* var. *fragrans.*
T Garber's spurge	*Chamaesyce* (= *Euphorbia*) *garberi.*
E Garrett's mint	*Dicerandra christmanii.*
E Highlands scrub hypericum	*Hypericum cumulicola.*
E Key tree-cactus	*Pilosocereus* (= *Cereus*) *robinii.*
E Lakela's mint	*Dicerandra immaculata.*
E Lewton's polygala	*Polygala lewtonii.*
E Okeechobee gourd	*Cucurbita okeechobeensis* ssp. *okeechobeensis.*
T Papery whitlow-wort	*Paronychia chartacea* (= *Nyachia pulvinata.*)
T Pigeon wings	*Clitoria fragrans.*
E Pygmy fringe-tree	*Chionanthus pygmaeus.*
E Sandlace	*Polygonella myriophylla.*
E Scrub blazing star	*Liatris ohlingerae.*
E Scrub mint	*Dicerandra frutescens.*
E Short-leaved rosemary	*Conradina brevifolia.*
E Small's milkpea	*Galactia smallii.*
E Snakeroot	*Eryngium cuneifolium.*
E Tiny polygala	*Polygala smallii.*
E Wireweed	*Polygonella basiramia* (= *ciliata* var. *b.*)

E = Endangered, T = Threatened, PT = Proposed for Reclassification to Threatened Status.

To request copies of the final implementation schedule, please see the **ADDRESSES** section above. Paper copies of both the MSRP and the final implementation schedule are available for public inspection at the South Florida Ecological Services Office.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 27, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–5471 Filed 3–23–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability for the Lost Pines Habitat Conservation Plan and Draft Environmental Assessment in Support of the County of Bastrop's Permit Application for Incidental Take of the Houston Toad Resulting From a Variety of Development and Other Land Use Activities in a 124,000-Acre Plan Area in Bastrop County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and 90-day public comment period.

SUMMARY: The County of Bastrop (County) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The applicant has been assigned permit number TE–113500–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of new residential, commercial, and multi-family development; expansion of existing residential, commercial, and multi-family development; ongoing uses of previously developed lands; Bastrop County infrastructure maintenance and improvement; emergency services; conservation subdivision development; wildlife management activities; forestry management activities; and agricultural management activities in an approximately 124,000-acre Plan Area in Bastrop County, Texas.

DATES: To ensure consideration, written comments must be received on or before June 25, 2007.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review Bastrop County's Lost Pines Habitat Conservation Plan (LPHCP) or the draft Environmental Assessment (EA) may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas. Written data or comments concerning the application, LPHCP, or draft EA should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–113500–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 90 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: The Lost Pines Habitat Conservation Plan (LPHCP) was developed by the County of Bastrop for an approximately 124,000-acre Plan Area which encompasses the entire currently known habitat for the Houston toad in Bastrop County, Texas.

The LPHCP supports the application for the issuance of an incidental take permit for the Houston toad within the Plan Area for specific land use and development activities over the next 30 years. Participation by landowners in the plan would be voluntary. Landowners that choose to participate in the LPHCP could receive incidental take authorization through the LPHCP's streamlined process, rather than seek individual authorization directly from the Service. The LPHCP proposes to implement measures to minimize and mitigate for adverse impacts to the toad and its habitat, and would apply an area-wide, habitat-based conservation approach, including financial incentives for voluntary conservation and public outreach, education, and research programs.

Landowners, developers, and other local interests could participate in the LPHCP and receive authorization for incidental take resulting from certain types of construction activities, conservation subdivision development, low-impact land management practices, and public infrastructure activities. High-density or large-scale land developments would not be eligible for participation in this plan, nor would the plan cover the implementation of high-impact land management activities (e.g., the conversion of pastured woodland to improved pasture and clear-cutting timber). The following specific activities would be eligible for incidental take coverage under the LPHCP: single family residential construction and use on legal, non-platted lots, single family residential construction within existing platted lots, commercial and multi-family construction and use on up to one acre, conservation subdivision development, agricultural management, forest management, wildlife management; Bastrop County infrastructure maintenance and improvement, emergency services; and, ongoing use of previously developed land.

Single family residential, commercial, and multi-family development activities on existing lots and existing unplatted lots would require potential LPHCP participants to obtain a Certificate of Participation from the County to receive incidental take authorization for these types of covered activities. Construction activities could receive incidental take coverage on up to one acre per project. Mitigation would be in the form of a fee paid to the LPHCP to fund the operation of conservation programs, or landowners with sufficient acreage could permanently protect acreage on-site to offset negative impacts from construction activities.

Conservation subdivision developers would be required to obtain a Subdivision Certificate from the County that certifies that their proposed project meets the Conservation Subdivision Development Guidelines of the LPHCP. The subdivision guidelines require an evaluation of existing habitat resources on the property, limit the density of residential lots or dwelling units, and require the designation of at least 70 percent of the subdivision for the permanent protection and management of the Houston toad. The two options available to subdivision applicants who wish to be eligible for incidental take coverage under the LPHCP are the low-density, large-lot design and higher density, clustered design. The guidelines address management and use standards for conservation areas within the subdivision and specify restrictive covenants for other areas that limit further subdivision of lots, encourage environmentally sensitive pesticide use, and encourage the use of native plants for landscaping. Efforts to minimize the impact of subdivision infrastructure would also be required under the guidelines. Mitigation for subdivision development impacts would be the preservation and management of

conservation areas within the subdivision for the Houston toad. The application fees generated by the issuance of Subdivision Certificates would be used to fund the LPHCP and its conservation programs.

The LPHCP includes guidelines for agricultural management, forest management, and wildlife management. Participation in the LPHCP and adherence to the guidelines would be voluntary; however, incidental take authorization under the LPHCP would be restricted to those activities that are in compliance with the guidelines. The purpose of the guidelines is to allow for reasonable land use practices while avoiding or minimizing negative or long-term impacts to the Houston toad. The agricultural management guidelines cover practices related to cultivated land, improved pasture or hayland, and rangeland/native grazing lands/grazable woodland/native pasture. The forest management guidelines would provide a framework for forest management activities such as management planning, road construction and maintenance, site preparation and planting, chemical applications, timber harvesting, and prescribed burning. The wildlife management guidelines describe the framework for activities such as management planning, brush management, reforestation, prescribed burning, providing supplemental food sources, restoring native grassland, constructing Houston toad breeding ponds, and controlling fire ants. The agriculture, wildlife and forestry guidelines are intended to be ''self-mitigating.'' This means that although there could be some short-term impacts to the toad or its habitat as a result of conducting activities included under the various guidelines, the applicant anticipates that there will be an overall net improvement in the quality or quantity of the toad habitat over the long-term.

Public infrastructure activities, emergency services, and ongoing use of previously developed land would be offered automatic coverage under the County's incidental take permit by following the guidelines outlined in the LPHCP. Low-impact land uses would be covered upon Bastrop County issuing a Notice of Receipt. No mitigation fees would be required for landowners seeking authorization for low-impact land uses. However, any incidental take that may occur as a result of land management practices that are not consistent with the applicable guidelines in the LPHCP are not covered.

The LPHCP conservation program and administration would be funded by a combination of fees collected from Plan participants and general revenue from the County. Collected fees would be used primarily to fund the biological monitoring, landowner incentive, and community outreach and education programs of the LPHCP. The County would provide funds sufficient to hire a LPHCP administrator, whose duties would include much of the actual operation of the LPHCP. Part of the job description for the LPHCP administrator would be to regularly apply for outside grants to increase funding for the Plan. Grants could be used to purchase land, easements, or development rights on Houston toad habitat from willing partners.

Rather than provide for the purchase and management of a publicly-owned, interconnected, habitat preserve system for the Houston toad, the LPHCP proposes to focus resources on strategic land protection and encourage voluntary conservation efforts by private landowners. This conservation program would use mitigation fees from participants seeking incidental take permits to help fund conservation and management activities that have broad community support. Using this method, a large portion of the active management for the Plan Area would be through the voluntary efforts of private landowners.

A key to maintaining quality toad habitat between designated conservation areas is the participation of private landowners in conservation efforts. The LPHCP would seek the help of private landowners by encouraging use of new and existing landowner incentive programs and by forming partnerships with community organizations to manage habitat. These initiatives would include: management of open space in existing residential subdivisions, supporting wildlife management associations, supporting the conversion of agricultural use land to a wildlife management use, private landowner partnerships and grant funding; and, expanding access to existing assistance programs.

In addition to encouraging and supporting the voluntary management of private lands for the Houston toad, the LPHCP would also support the acquisition of development rights, conservation easements, or land from willing partners, if sufficient funds become available. Because funds are limited, the LPHCP would prioritize the use of funds for acquiring development rights, easements, and land. A set of minimum and preferred criteria to evaluate tracts in the Plan Area that may be available to benefit the Houston toad have been established. These criteria would ensure that funds would be used on the properties that provide the most desirable characteristics for Houston toad conservation.

The LPHCP would also offer mitigation in the form of community education and public outreach. Activities would include: distribution of LPHCP guidelines; distribution of a fact sheet about the ESA and LPHCP to septic permit applicants in Bastrop County; conducting an annual Houston toad community education workshop; and, developing a county-wide Integrated Pest Management Plan.

Support for Houston toad monitoring and research programs would also be included in the LPHCP. The LPHCP administrator would maintain a database of Houston toad surveys and known locations, distribute spatial data for use in conservation planning, and help researchers team with private landowners willing to provide access to Houston toad habitat on their property.

The County expects that by creating a fair, simple, and certain process for obtaining incidental take authorization, the burden on individual landowners is reduced and it facilitates desired economic development in the Plan Area while preserving Houston toad habitat and supporting conservation research.

Larry G. Bell,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E7–5464 Filed 3–23–07; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–ML; GP7–0092]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council will meet Friday, April 13, 2007 at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane Valley, Washington 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m., adjourn at 4 p.m., and will be open to the public. Topics of discussion will include: (1) Spokane District's land use plan and potential revision; (2) an update on management of access to the Juniper Dunes area; (3) Spokane District priorities and budget; and (4) prioritization of topics for future meetings. There will be an opportunity for public comment at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Pavey or Sandie Gourdin, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane Valley, Washington 99212–1275, or call (509) 536–1200.

Dated: March 20, 2007.

Robert B. Towne,

District Manager.

[FR Doc. E7–5466 Filed 3–23–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 10, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 10, 2007.

J. Paul Loether,

Chief National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Glassell Park Elementary School, 2211 West Avenue 30, Los Angeles, 07000309

San Mateo County

La Dolphine, 1761 Mannor Dr., Hillsborough, 07000308

Santa Clara County

Hewlett—Packard House and Garage, 367 Addison Ave., Palo Alto, 07000307

Sonoma County

SS POMONA (Shipwreck), Fort Ross Cove, off Fort Ross Historic State Park, Jenner, 07000306

COLORADO

Weld County

Greeley Tribune Building, 714 8th St., Greeley, 07000310

KANSAS

Atchison County

Atchison County Memorial Hall, 819 Commercial St., Atchison, 07000317

Chautauqua County

Adam, L.C., Mercantile Building, 618 Cedar St., Cedar Vale, 07000312

Douglas County

House, Edward, House, 1646 Massachusetts St., Lawrence, 07000316

Osage County

Osage County Courthouse, (County Courthouses of Kansas MPS), 717 Topeka Ave., Lyndon, 07000320

Sedgwick County

Adeline Apartment Building, 1403 N. Emporia, Wichita, 07000314
Belmont Arches, Belmont jct. of Central and Douglas, Wichita, 07000313
Market Street Cottage, 1144 N. Market St., Wichita, 07000315

Shawnee County

College Avenue Historic District, College Ave. bet. Huntoon St. and 17th St., Topeka, 07000321

Sumner County

Smith, H.F., House, 721 W. Harvey Ave., Wellington, 07000318

Wyandotte County

Williamson, Roy, House, 1865 Edwardsville Dr., Edwardsville, 07000311

MISSOURI

Jackson County

Auto Coach Building, 1730–34 Oak St., Kansas City, 07000328
Federal Reserve Bank of Kansas City, 925 Grand Blvd., Kansas City, 07000327
Globe Storage and Transfer Company Building, 1712 Main St., Kansas City, 07000326

Newton County

Neosho Commercial Historic District (Boundary Increase), (Neosho MPS) 114, 116, 118–120, 120 and 124–126 S. Wood St., Neosho, 07000323
St. Louis Independent City Melrose Apartments, 4065 W. Pine Boulevard, St. Louis (Independent City), 07000324
Missouri Athletic Club Building, 405–409 Washington Ave., St. Louis (Independent City), 07000325
St. Mary's Infirmary, 1536–48 Papin St., St. Louis (Independent City), 07000322

NEW YORK

Chenango County

Sannick Family Farm, 129 Jordan Ln., South Oxford, 07000335

Columbia County

Copake Iron Works Historic District, Taconic State Park, Copake Falls, 07000334

Dutchess County

Campbell, Dr. Cornelius Nase, House, 6031 NY 82, Stanfordville, 07000333

Westchester County

Bar Building, 199 Main St., White Plains, 07000331
Public School No. 13, 160 McLean Ave., Yonkers, 07000332
Wilson, Albert E. and Emily, House, 617 Brook St., Mamaroneck, 07000330

Yates County

Dundee Village Historic District, Main, Water, and Seneca Sts., Dundee, 07000329

SOUTH CAROLINA

Cherokee County

Nuckolls—Jefferies House, 571 Asbury Rd., Pacolet, 07000336

TEXAS

Hidalgo County

McAllen Ranch, FM 1017, 13 mi. W of TX 281, Linn, 07000337

VIRGINIA

Henry County

Fairy Stone State Park Historic District, 967 Fairystone Lake Dr., Stuart, 07000338

WISCONSIN

Columbia County

Arnold, E. Clarke and Julia, House, 954 Dix St., Columbus, 07000339

[FR Doc. E7–5410 Filed 3–23–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–557]

In the Matter of Certain Automotive Parts; Notice of Commission Determination Not To Review a Final Determination of Violation pf Section 337; Schedule for Filing Written Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on

December 4, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2006, based on a complaint filed by Ford Global Technologies, LLC (''Ford'')of Dearborn, Michigan. An amended complaint was filed on December 12, 2005, and a supplemental letter was filed on December 22, 2005. The amended complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D496,890 (''the '890 patent''), D493,552 (''the '552 patent''), D497,579 (''the '579 patent''), D503,135 (''the '135 patent''), D496,615 (''the '615 patent''), D502,561 (''the '561 patent''), D492,044 (''the '044 patent''), D491,119 (''the '119 patent''), D503,912 (''the '912 patent'') and D495,979 (''the '979 patent''). The complaint named the following as respondents: Keystone Automotive Industries, Inc. of Pomona, California; U.S. Autoparts Network, Inc. of Carson, California; Gordon Auto Body Parts Co., Ltd. of Taiwan; Y.C.C. Parts Manufacturing Co., Ltd. of Taiwan; TYC Brother Industrial Co., Ltd. of Taiwan; and Depo Auto Parts Ind. Co., Ltd. of Taiwan (collectively ''the Respondents''). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 3, 2006, the Commission issued a notice not to review an ID granting partial termination of this investigation as to the '801, '685, '299, '658 patents.

On December 4, 2006, the ALJ issued the final ID, finding that the '119, '912, and '979 patents are invalid due to public use; that the '890, '552, '135, '579, '561, '044, and '615 patents are not invalid, are enforceable, and are infringed; and that there is a domestic industry involving the patents in issue. Thus, he found a violation of section 337 of the Tariff Act of 1930, as amended.

On December 15, 2006, Ford and the Respondents filed petitions for review. Ford sought review of the ALJ's finding that the '119, '912 and '979 patents are invalid as anticipated. The Respondents petitioned for review of the ALJ's findings that patents '890, ''552, '579, '135, '615, '561, and '044 were not anticipated, obvious or unenforceable, and of Orders No. 7 and 12, in which the ALJ denied certain affirmative defenses. The Office of Unfair Import Investigations opposed both petitions for review. On December 15, 2006, all parties filed responses to the petitions for review.

On December 26, 2006, the Commission determined to extend the deadline for determining whether to review the ALJ's ID by 60 days to March 20, 2007, and to extend the target date for completion of the investigation by 60 days to May 4, 2007.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined not to review the final ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The Commission does not wish to receive further written submissions on the issue of violation. However, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should be no more than twenty-five (25) pages and should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on March 30, 2007. Reply submissions must be filed no later than the close of business on April 6, 2007. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to

submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.

Issued: March 20, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–5465 Filed 3–23–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–582]

In the Matter of Certain Hydraulic Excavators and Components Thereof; Notice of Commission Decision Not To Review Initial Determinations Granting Joint Motions To Terminate Investigation as to Certain Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determinations (''IDs'') (Orders No. 18 and 19) granting joint motions to terminate the above-captioned investigation as to certain respondents.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 29, 2006, the Commission instituted this investigation, based on a complaint filed by Caterpillar Inc. (''Caterpillar'') of Peoria, Illinois. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hydraulic excavators and components thereof by reason of infringement of U.S. Trademark Registration No. 2,140,606, U.S. Trademark Registration No. 2,421,077, U.S. Trademark Registration No. 2,140,605, and U.S. Trademark Registration No. 2,448,848. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The complaint named twenty (20) firms as respondents. Two respondents have been found in default.

On January 26, 2007, joint motions between Caterpillar and Respondents Deanco Auction Co. Of Mississippi Inc., Petrowsky Auctioneers, Inc., Ritchie Bros. Auctioneers, Inc., and Ritchie Brothers Auctioneers (America), Inc. (collectively, the ''Auctioneer Respondents'') and between Caterpillar and Respondents Musselman Construction Co., d/b/a Musselman Rentals and Sales, Tractorland Equipment Co., Inc., and Pacific Rim Machinery, Inc. (collectively, the ''Non-Auctioneer Respondents'') were filed seeking termination of this investigation based upon settlement agreements.

On February 21, 2007, the ALJ issued the subject IDs (Order Nos. 18 & 19) terminating the investigation as to the Auctioneer Respondents and Non-Auctioneer Respondents on the basis of settlement agreements. The ALJ found no indication that termination of the investigation as to these respondents on the basis of the settlement agreements would adversely affect the public interest, and that the procedural requirements for terminating the investigation had been met. No petitions for review were filed.

The Commission has determined not to review the IDs.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: March 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–5405 Filed 3–23–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–598]

In the Matter of Certain Unified Communications Systems, Products Used With Such Systems, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 16, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation of Redmond, Washington. A supplemental letter was filed on March 9, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain unified communications systems, products used with such systems, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,421,439, 6,430,289, 6,263,064, and 6,728,357. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplemental letter, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m.

to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint as supplemented, the U.S. International Trade Commission, on March 19, 2007, *Ordered, That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain unified communication systems, products used with such systems, and components thereof by reason of infringement of one or more of claims 1 and 3 of U.S. Patent No. 6,421,439; claims 1–20 of U.S. Patent No. 6,430,289; claims 1, 3–5, 7–9, and 11–13 of U.S. Patent No. 6,263,064; and claims 1, 2, 4, 6, 8, and 17 of U.S. Patent No. 6,728,357; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Microsoft Corporation, 1 Microsoft Way, Redmond, Washington 98052.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Alcatel-Lucent, 54 rue La Boetie, Paris 75008, France.

(c) The Commission investigative attorney, party to this investigation, is David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–R, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: March 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–5399 Filed 3–23–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–005]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 29, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1103 (Final) (Certain Activated Carbon From China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on April 9, 2007.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 20, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 07–1480 Filed 3–22–07; 11:55 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection for the Confidentiality & Disclosure of State Unemployment Compensation Information Final Rule and State Income and Eligibility Verification Provisions of the Deficit Reduction Act of 1984; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the regulatory requirements of the Confidentiality and Disclosure of State

Unemployment Compensation Information final rule and State Income and Eligibility Verification System (IEVS) provisions of the Deficit Reduction Act of 1984.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before May 25, 2007.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Room C4518, Washington, DC 20210, Attention: Julie Balster. Telephone number: 202–693–3615 (this is not a toll-free number). Fax: 202–693–2874. E-mail: *balster.julie@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Deficit Reduction Act of 1984 established an income and eligibility verification system (IEVS) for the exchange of information among state agencies administering specific programs. The programs include Temporary Assistance for Needy Families, Medicaid, Food Stamps, Supplemental Security Income, Unemployment Compensation and any state program approved under Title I, X, XIV, or XVI of the Social Security Act. Under the Act, programs participating must exchange information to the extent that it is useful and productive in verifying eligibility and benefit amounts to assist the child support program and the Secretary of Health and Human Services in verifying eligibility and benefit amounts under Titles II and XVI of the Social Security Act.

On September 27, 2006, the Employment and Training Administration of the Department of Labor issued a final rule regarding the Confidentiality and Disclosure of State Unemployment Compensation Information. This rule supports and expands upon the requirements of the 1984 Deficit Reduction Act of 1984 and subsequent regulatory changes.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

As the only continuous source of income and eligibility verification, the data are required by other agencies to administer and monitor multiple programs. The Confidentiality and Disclosure of State Unemployment Compensation Information rule amends the IEVS rule and provides regulatory revisions at 20 CFR part 603 in accordance with SSA Section 303(a)(1) related to the methods of administration requirement and supports the statutory requirements for SSA Sections 303(a)(7), (c)(1), (d), (e), (f), (h) and (i).

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Confidentiality and Disclosure of State Unemployment Compensation Information/Income Eligibility Verification System.

OMB Number: 1205–0238.

Agency Number: None.

Record Keeping: State governments.

Affected Public: State governments.

Cite/Reference/Form/etc.: Section 303 of Title III of the Social Security Act.

Total Respondents: 53 state agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 1 minute.

Estimated Total Burden Hours: 24,104 hours.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 19, 2007.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E7–5430 Filed 3–23–07; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07–026]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council. The agenda for the meeting includes updates from each of the Council committees, including discussion and deliberation of potential recommendations. The Council Committees address NASA interests in the following areas: Aeronautics, Audit and Finance, Space Exploration, Human Capital, Science, and Space Operations.

DATES: Thursday, April 19, 2007, 8 a.m.–4 p.m.

ADDRESSES: Seashore Ballroom, Hilton Cocoa Beach Oceanfront, 1550 N. Atlantic Avenue, Cocoa Beach, FL 32931.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Blackerby, Designated Federal Official, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4688.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 19, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–5388 Filed 3–23–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07–027]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an

exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 6,314,362, NASA Case No. ARC–14359–1, entitled Method and System For An Automated Tool For En Route Traffic Controllers to The Boeing Company, having its principal place of business at 100 N. Riverside, Chicago, IL 60606. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: March 16, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–5378 Filed 3–23–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07–028]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in NASA Case Number LAR–16324–1 entitled ''Self-Activating System and Method for Alerting When an Object or a Person is Left Unattended,'' U.S. Patent Number 6,714,132; LAR–16324–2 entitled ''Self-Activating System and Method for Alerting When an Object or a Person is Left Unattended,'' U.S. Patent Number 7,106,203 to MaxTec, Inc. having its principal place of business in Wellington, Florida. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681–2199, (757) 864–3221 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681–2199, (757) 864–3221; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: March 16, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–5384 Filed 3–23–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Thursday, March 29, 2007, at 8 a.m. and Friday, March 30, 2007 at 8 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

STATUS: Some portions open, some portions closed.

Open Sessions

March 29, 2007
8–9 a.m.
9–10 a.m.
10–10:30 a.m.
10:30 a.m.–12:30 p.m.
2–3 p.m.
3–5 p.m.
March 30, 2007
8–10 a.m.
10:30 a.m.–12 noon
1:20–3 p.m.

Closed Sessions

March 29, 2007
5–6 p.m.
March 30, 2007
10–10:30 a.m.
1–1:10 p.m.
1:10–1:20 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, *rwebber@nsf.gov,* (703) 292–7000, *http://www.nsf.gov/nsb/.*

MATTERS TO BE DISCUSSED:

Thursday, March 29, 2007

CPP Subcommittee on Polar Issues

Open Session (8–9 a.m.)

- Approval of November Minutes
- Subcommittee Chairman's Remarks
- The Oden in Antarctica
- NSB Resolutions and the NAS/NRC Report on Polar Icebreakers
- Legislation Implementing Antarctic Treaty Measures on Liability and Tourism

CPP Task Force on International Science

Open Session (9–10 a.m.)

- Approval of Minutes
- Task Force Chairman's Comments
- Overview of the Task Force Roundtable Discussion on International Science and Engineering Partnerships held March 9, 2007 in Brussels, and the Task Force discussion held March 13, 2007 in Trieste
- Summary of the Conference of Women Leaders in Science, Technology, and Engineering held January 8–10, 2007 in Kuwait
- Presentation on National Academies of Science report, The Fundamental Role of Science and Technology in International Development: An Imperative for the U.S. Agency for International Development
- Discussion of future Task Force activities

CPP Task Force on Transformative Research

Open Session (10–10:30 a.m.)

- Approval of Minutes for November 2006 Meeting
- Task Force Chairman's Remarks
- Final Draft Report for Board Review and Approval, Enhancing Support of Transformative Research at the National Science Foundation

EHR Subcommittee on Science and Engineering Indicators

Open Session (10:30 a.m.–12:30 p.m.)

- Approval of November Minutes
- Subcommittee Chairman's Remarks
- Review of Elementary and Secondary Education chapter: Chapter 1
- Review of State Indicators chapter: Chapter 8
- Condensed Version of Indicators
- Key Findings: K–12 chapter, Chapter 1
- Key Findings: State chapter, Chapter 8
- Parallel discussion of Science and Engineering Indicators 2010: Status
- State Considerations
- Industry Considerations
- Subcommittee Chairman's summary

Committee on Strategy and Budget

Open Session (2–3 p.m.)

- Approval of February 8, 2007 CSB Minutes
- Chairman's Remarks
- Status of NSF Budget Request and Congressional Testimony
- Update on the Impacts of the NSB Policy to Eliminate Cost-Sharing on Grants
- Findings from NSF Working Group on the Impact of Proposal and Award Management Mechanisms (IPAMM)

Committee on Programs and Plans

Open Session (3–5 p.m.)

- Approval of Minutes
- Committee Chairman's Remarks
- Status Report: Task Force on International Science
- Subcommittee on Polar Issues
- Task Force on Transformative Research
- Final Report and Recommendations
- Request for Information: Recompetition, Operations and Management Costs for NSF Contracts, Cooperative Agreements and Grants
- Potential Impacts to the MREFC Program from the Realities of the FY 2007 Budget and the FY 2008 Request.
- NSB Information Item: Update on the Division of Astronomical Sciences Senior Review

Closed Session (5–6 p.m.)

- NSB Action Item: National Optical Astronomy Observatory and the National Solar Observatory
- NSB Action Item: National Astronomy and Ionosphere Center

Friday, March 30, 2007

Committee on Audit and Oversight

Open Session (8–10 a.m.)

- Approval of Minutes of February 2007 Meeting
- Committee Chairman's Opening Remarks
- Report to the Board on the NSF Merit Review Process, FY 2006
- Chief Operating Officer's Update
- Chief Financial Officer's Update
- NSF Audit Resolution Practices and Procedures
- FY2006 Financial Statement Audit Corrective Action Plan Update
- FY2007 Financial Statement Audit update
- OIG comments on FY2006 and FY2007 Financial Statement Audit matters
- Committee Chairman's closing Remarks

Closed Session (10–10:30 a.m.)

- Pending Investigations

Committee on Education and Human Resources

Open Session (10:30 a.m.–12 noon)

- Approval of February 2007 Minutes
- Committee Chairman's Remarks
- Update on Modifications of NSF–EHR Directorate Organization and Interagency Discussions
- Subcommittee on Science and Engineering Indicators
- Summary and Follow-on to the Engineering Education Workshops
- NSB Executive Officer's Report

Plenary Executive Closed

Closed Session (1–1:10 p.m.)

- Approval of February 2007 Minutes
- Member Proposal
- Honorary Award

Plenary Closed

Closed Session (1:10–1:20 p.m.)

- Approval of February 2007 Minutes
- Awards and Agreements
- Closed Committee Reports

Plenary Open

Open Session (1:20–3 p.m.)

- Approval of February 2007 Minutes
- Resolution to Close May 2007 Meeting
- Chairman's Report
- Board Discussion: STEM Education Commission
- Director's Report
- Open Committee Report

Russell Moy,

Attorney-Advisor.

[FR Doc. E7–5493 Filed 3–23–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–7 and 50–255]

License No. DPR–20, Nuclear Management Company, LLC; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a director's decision with regard to a petition dated April 4, 2006, filed by Mr. Terry J. Lodge, on behalf of five organizations and 30 individuals, hereinafter referred to as the Petitioners. Representatives for the Petitioners participated in a telephone conference call with NRC's Petition Review Board (PRB) on April 26, 2006, to discuss the

petition. The teleconference was transcribed and the transcription was treated as a supplement to the petition. Transcripts of the teleconference are available via the Agencywide Documents Access and Management System (ADAMS) on the agency's Web site at *http://www.nrc.gov/reading-rm/adams.html,* and for inspection at the NRC Public Document Room, located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The petition concerns the operation of the independent spent fuel storage installation (ISFSI) at the Palisades Nuclear Plant.

The Petitioners requested that the NRC take enforcement action against the licensee for the Palisades Nuclear Plant, Nuclear Management Company, LLC (NMC), by condemning and stopping the use of the two independent spent fuel storage installation (ISFSI) concrete pads holding dry spent fuel storage casks on the plant site.

As the basis for the petition, the Petitioners stated that the concrete cask storage pads do not conform with NRC regulations for earthquake stability, specifically 10 CFR 72.212(b)(2)(i)(B) and 72.212(b)(3), and, therefore, pose a hazard in case of an earthquake. The Petitioners asserted that the licensee's evaluations of the older and newer concrete storage pads did not properly consider the behavior of the soil beneath the pads in determining the effects on the storage casks as a result of a seismic event.

On April 26, 2006, the NRC staff's PRB held a teleconference with the Petitioners. The teleconference gave the Petitioners an opportunity to provide additional information and to clarify issues raised in the petition. During the teleconference, the Petitioners requested additional time to submit a supplement to the petition, and the PRB agreed to the request, as documented in a letter to the Petitioners, dated May 4, 2006. However, no supplement was submitted. On June 27, 2006, the NRC staff informed the Petitioners by letter that the issue regarding the seismic response of the older ISFSI pad, and the issue of soil amplification for the newer pad, had been previously resolved and would not be considered under 10 CFR 2.206. In that same letter, the staff informed the Petitioners that the issue regarding the slope stability analysis for the newer pad was accepted for review under 10 CFR 2.206. The transcript of the teleconference and the letters are available in ADAMS, as stated above.

On November 28, 2006, the NRC sent a copy of the proposed director's decision to the Petitioners and to the licensee for comment. At the request of the Petitioners, the NRC extended the end of the comment period from January 5, 2007, to February 2, 2007. The Petitioners submitted comments by electronic mail on February 2, 2007. The comments and the staff's responses to them are available electronically through the NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html,* under docket number 07200007.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the Petitioners' request, to condemn and stop the use of the two ISFSI concrete pads holding dry spent fuel storage casks at the Palisades site, is denied. The NRC staff has concluded that the Petitioners' concerns have been adequately addressed by the licensee's revised slope stability evaluation for the newer concrete storage pad. The reasons for this decision are explained in the director's decision [DD–07–02] pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206, the complete text of which is available at the Commission's Public Document Room, located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room).

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 20th day of March 2007.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–5433 Filed 3–23–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability Concerning Technical Specification Improvement To Add an Action Statement for Two Inoperable Control Room Air Conditioning Subsystems to the Technical Specifications Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model Application related to changes to the Standard Technical Specifications (STS), Section 3.7.5 (STS 3.7.4 for BWR/6), ''Control Room Air Conditioning (AC) System'' for NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6), Rev. 3.0. The changes add an Action Statement to Limiting Condition for Operation (LCO) (LCO 3.7.5 for BWR/4 and LCO 3.7.4 for BWR/6). The new Action Statement allows a finite time to restore one control room AC subsystem to operable status and requires verification that control room temperature remains < 90°F every 4 hours. The proposed changes would also revise the Bases for STS 3.7.5 (STS 3.7.4 for BWR/6).

The NRC staff has also prepared a model safety evaluation (SE) and no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to adopt the associated changes into plant-specific technical specifications (TS). Licensees of nuclear power reactors to which the models apply may request amendments confirming the applicability of the SE and NSHC determination to their reactors.

DATES: The NRC staff issued a **Federal Register** Notice (71 FR 75774, December 18, 2006) that provided a model SE and a model NSHC determination relating to adding an action statement for two inoperable control room AC subsystems to the plant specific TS. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to adopt the changes. The staff has posted a model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to revise the Standard Technical Specifications (STS), Section 3.7.5, ''Control Room Air Conditioning (AC) System.'' The NRC staff can most efficiently consider applications based

upon the model application if the application is submitted within one year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Peter C. Hearn, Mail Stop: O12H2, 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 for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP includes an opportunity for the public to comment on proposed changes to operating licenses, including the technical specifications (TS), after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed generic change to operating licenses and to either reconsider the change or issue the announcement of availability for the change proposed for adoption by licensees. Those licensees opting to apply for the subject change to operating licenses are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures. This notice involves adding an action statement for two inoperable control room AC subsystems to the associated STS Limiting Condition for Operation (LCO).

Applicability

This proposed change to the standard technical specifications (STS) was submitted by the Technical Specifications Task Force (TSTF) in TSTF–477, Revision 3, ''Adding an Action Statement for Two Inoperable Control Room Air Conditioning Subsystems.''

This proposal to modify technical specification requirements by the adoption of TSTF–477 is applicable to all licensees of General Electric Boiling Water Reactors who have adopted or will adopt in conjunction with the change, technical specification requirements for a Bases Control Program consistent with the TS Bases Control Program described in Section 5.5 of the STS. Licensees that have not adopted requirements for a Bases Control Program by converting to the improved STS or by other means, are requested to include the requirements for a Bases Control Program consistent with the STS in their application for the change. The need for a Bases Control Program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the Bases upon adoption of TSTF–477. The staff is requesting that the Bases changes be included with the proposed license amendments consistent with the Bases in TSTF–477. To ensure that the overall change, including the Bases, includes appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on the licensee's incorporation of the changes into the Bases document and on requiring the licensee to control the changes in accordance with the Bases Control Program.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed in TSTF–477 use the CLIIP to submit an application that adheres to the following model. Any deviations from the model application should be explained in the licensee's submittal.

The CLIIP does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–477. Variations from the approach recommended in this notice may, however, 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

In a **Federal Register** Notice dated December 18, 2006 (71 FR 75774), the NRC staff requested comment on the use of the CLIIP to process requests to adopt the TSTF–477 changes. In addition, there have been multiple notices published for plant-specific amendment requests to adopt changes similar to those described in this notice.

The NRC staff's model SE and model application may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records are accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site (the Electronic Reading Room).

The NRC staff received no formal comments following the notice published on December 18, 2006 (71 FR 75774), soliciting comments on the model SE and NSHC determination related to the TSTF–477 changes. The staff did receive editorial comments on the model SE and model application. The comments involving a spacing issue between words, deleting the extraneous use of the word Bases, a missing parentheses and replacing the an ''iSTS'' acronym with ''STS'' were incorporated. The comment involving placing a bracket around the Control Room Temperature limit of < 90°F was not incorporated since it would allow Control Room Temperatures of greater than 90°F. The comment was retained involving removing the term ''Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59'' in order emphasize the requirement for a License Amendment and Safety Evaluation when Bases changes affect the Technical Specifications.

The NRC staff finds that the previously published models remain appropriate references and has chosen not to republish the model SE and model NSHC determination in this notice. As described in the model application prepared by the NRC staff, licensees may reference in their plant-specific applications to adopt the TSTF–477 changes, the model SE, NSHC determination, and environmental assessment previously published in the **Federal Register** on December 18, 2006 (71 FR 75774).

Dated at Rockville, Maryland, this 14th day of March 2007.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

For inclusion on the technical specification Web page, the following example of an application was prepared by the NRC staff to facilitate use of the consolidated line item improvement process (cliip). The model provides the expected level of detail and content for an application to adopt TSTF–477, revision 3, add an action statement for two inoperable control room air conditioning subsystems to the technical specifications using cliip. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as nuclear regulatory commission regulations.

U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555–0001

SUBJECT: Plant Name, Docket No. 50–, Application For Technical Specification

Change Tstf–477, Add An Action Statement For Two Inoperable Control Room Air Conditioning Subsystems To The Technical Specifications Using Consolidated Line Item Improvement Process

Gentlemen: In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify the TS by adding an action statement for two inoperable control room AC subsystems to the plant specific TS.

Enclosure 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Enclosure 2 provides the existing TS pages marked up to show the proposed change. Enclosure 3 provides revised (clean) TS pages. Enclosure 4 provides the existing TS Bases pages marked up to show the proposed change in accordance with 10 CFR 50.36(a).

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

[Name, Title]

Enclosures:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Marked up Existing TS Bases Changes

cc: NRC Project Manager
NRC Regional Office
NRC Resident Inspector
State Contact

Enclosure 1—Description and Assessment

1.0 Description

The proposed amendment would modify technical specifications by adding an Action Statement to the Limiting Condition for Operation (LCO). The new Action Statement allows a finite time to restore one control room AC subsystem to operable status and requires verification that control room temperature remains < 90 °F every 4 hours.[1]

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) TSTF–477 Revision 3. The availability of this TS improvement was published in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of TSTF–477, and Published Safety Evaluation

[LICENSEE] has reviewed TSTF–477 (Reference 1), and the NRC model safety evaluation (SE) (Reference 2) as part of the CLIIP. [LICENSEE] has concluded that the information in TSTF–477, as well as the 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. [NOTE: Only those changes proposed in TSTF–477 are addressed in the model SE. The model SE addresses the entire fleet of General Electric Boiling Water Reactors. The plants adopting TSTF–477 must confirm the applicability of the changes to their plant.]

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in TSTF–477 or the NRC staff's model safety evaluation dated [DATE]. [NOTE: The CLIIP does not prevent licensees from requesting an alternate approach or proposing changes without the requested Bases or Bases control program. However, deviations 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.]

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHC) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHC presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

In addition, [LICENSEE] has proposed TS Bases consistent with TSTF–477 which provide guidance and details on how to implement the new requirements. Finally, [LICENSEE] has a Bases Control Program consistent with Section 5.5 of the Standard Technical Specifications (STS).

4.0 Environmental Evaluation

The amendment changes requirements with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendment adopting TSTF–477, Rev 3, 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 TSTF–477, Rev 3, involves no significant hazards considerations, and there has been no public comment on the finding in **Federal Register** Notice 71 FR 75774, December 18, 2006. 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.

5.0 References

1. TSTF–477, Revision 3, ''Adding an Action Statement for Two Inoperable Control Room Air Conditioning Subsystems.''
2. NRC Model Safety Evaluation Report.

Enclosure 2—Proposed Technical Specification Changes (Mark-Up)

Enclosure 3—Proposed Technical Specification 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]

Enclosure 4—Proposed Changes to Technical Specification Bases Pages

[FR Doc. E7–5434 Filed 3–23–07; 8:45 am]

BILLING CODE 7590–01–P

[1] [In conjunction with the proposed change, technical specifications (TS) requirements for a Bases Control Program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS.]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55491; File No. SR–CBOE–2006–95]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To List for Trading Options on the Vanguard® Emerging Markets Exchange Traded Fund

March 19, 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 30, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange submitted Amendment No. 1 to the proposed rule change on December 6, 2006. The Exchange submitted Amendment No. 2 to the proposed rule change on February 28, 2007. The Commission is publishing this notice and order to solicit comments on the proposal, as amended, from interested persons and to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the Vanguard® Emerging Markets Exchange Traded Fund (''Fund Options''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Office of the Secretary, CBOE 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. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to obtain approval to list for trading on the Exchange options on the Vanguard® Emerging Markets Exchange Traded Fund (''Fund'') on a pilot basis for six months to commence on the date of approval and through six months after that date. The Exchange currently has in place initial listing and maintenance standards set forth in CBOE Rules 5.3.06 and 5.4.08, respectively (''Listing Standards'') that are designed to allow the Exchange to list funds structured as open-end investment companies, such as the Fund, without having to file for Commission approval to list for trading options on the fund.[3] The request for approval is based on the Exchange's determination that the Fund meets substantially all of the Listing Standards requirements, and for the requirements that are not met, sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund.

As provided in the Fund's most recent prospectus, dated November 10, 2006, the Fund is an open-end investment company that is designed to hold a portfolio of securities that tracks the Morgan Stanley Capital International, Inc. Emerging Markets Index (''MSCI Emerging Markets Index'' or ''Index''), which includes approximately 850 common stocks of companies located in 25 emerging markets around the world.[4] The Fund employs a ''passive management''—or indexing—investment approach by investing substantially all (normally about 95%) of its assets in the common stocks that comprise the MSCI Emerging Markets Index while employing a form of sampling to reduce risk.

As of January 31, 2007, the Fund was comprised of 862 securities and the ten largest holdings in the fund made up 18.5% of the total assets in the Fund.[5] The security with the greatest individual weight of 5.4% is OAO Gazprom ADRSamsung Electronics Co LTD GDR Registered, a South KoreanRussian security. The security with the smallest weight is Thanachart Capital Public Company Ltd., Metropolitan Bank & Trust Coa Thai security, at less than 0.01%. As of January 31, 2007, the largest markets covered in the Fund were South Korea (14.9%), Taiwan (12.3%), Russia (9.9%), Brazil (10.7%) and South Africa (8.5%).

The Exchange believes that Vanguard's stated investment policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduces concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund (''Fund Shares'') are issued in exchange for an ''in kind'' deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregation of 100,000 shares (each, a ''Creation Unit''), as set forth in the Fund's prospectus.[6] The Fund issues and sells Fund Shares in Creation Unit sizes through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity-trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and ''in kind,'' with a portfolio of securities and cash exchanged for Fund Shares that have been tendered for redemption.

The Exchange notes that the maintenance Listing Standards set forth in Rule 5.4.08 for open-end investment companies do not include criteria based on either the number of shares or other units outstanding or on their trading volume. As explained in SR–CBOE–97–03,[7] the absence of such criteria is justified on the ground that since it should always be possible to create additional shares or other interests in open-end investment companies at their net asset value by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of such shares or interests. This, in turn, should make it highly unlikely that the market for listed, open-end investment company shares could be capable of

[3] CBOE Rules 5.3.06 and 5.4.08 set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trust or other similar entities traded on a national securities exchange or through the facilities of a national securities exchange (''Exchange Traded Funds''). *See* Exchange Act Release, No. 34–40166 (July 2, 1998), 63 FR 37430 (July 10, 1998) (approval order for SR–CBOE–97–45, predating U.S. Securities and Exchange Commission's (''Commission'') adoption of Rule 19b–4(e) of the Securities Exchange Act of 1934 (''New Product Release''). *See* Exchange Act Release No. 34–40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998)).

[4] As provided by Morgan Stanley Capital International, Inc. (''MSCI''), which is the entity that created and currently maintains the Index, the Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Index. The Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in the Index. As of September 29, 2006, the Index was comprised of 852 constituents with the top five constituents representing the following weights: 5.01%, 4.09%, 1.82%, 1.79%, and 1.76%. The Index is rebalanced quarterly, calculated in U.S. Dollars on a real time basis, and disseminated every 60 seconds during market trading hours.

[5] The ten largest holdings are: (1) OAO Gazprom ADR, (2) Samsung Electronics Co., Ltd., (3) China Mobile (Hong Kong), Ltd., (4) America Movil SA de CV, (5) Lukoil Sponsored ADR; (6) Taiwan Semiconductor Manufacturing Co., Ltd., (7) Petroleo Brasileiro SA Pfd (8) Hon Hai Precision Industry Co., Ltd., (9) Cemex SA CPO, and (10) Petroleo Brasileiro SA. *See https://flagship.vanguard.com/VGApp/hnw/FundsSnapshot?FundId=0964&FundIntExt=INT.*

[6] *See* Exchange Act Release No. 34–44990, n. 16 (Oct. 25, 2001), 66 FR 56869 (Nov. 13, 2001) (approval order for SR–Amex–2001–45, noting that local restrictions on transfers of securities to and between certain kinds of investors exist in certain foreign markets that preclude in-kind creation and redemptions of Exchange-Traded Funds).

[7] *See* Securities Exchange Act Release No. 40166 (July 2, 1998), 63 FR 37430 (July 10, 1998).

manipulation, since whenever the market price for such shares departs from net asset value, arbitrage will occur. Similarly, since the Fund meets all of the requirements of the Listing Standards, except as described below, the Exchange believes that the same analysis applies to the Fund.

The Exchange has reviewed the Fund and determined that it satisfies the Listing Standards, except for the requirement set forth in CBOE Rule 5.3.06(A), which requires the Fund to meet the following condition: ''any non-U.S. component securities of the index or portfolio on which the Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.'' The Exchange currently has in place comprehensive surveillance sharing agreements (''CSSA'') with foreign exchanges that cover 48.10% of the securities in the Fund. One of the foreign exchanges on which component securities of the Fund are traded and with which the Exchange does not have a CSSA is the Bolsa Mexicana de Valores (''Bolsa''). The percentage of the weight of the Fund represented by these securities is 6.60%.

The Exchange notes that the Commission recently approved the listing and trading of options on the iShares MSCI Emerging Markets Index Fund on a on a pilot basis [8] and permitted the Exchange to rely on the memorandum of understanding executed by the Commission and the CNBV, dated as of October 18, 1990 (''MOU'') for purposes of satisfying its surveillance and regulatory responsibilities for the component securities in the Fund that trade on the Bolsa until the Exchange is able to secure a surveillance agreement with the Bolsa.[9]

Specifically, in connection with the listing and trading of options on the iShares MSCI Emerging Markets Index Fund, the Exchange contacted the Bolsa with a request to enter into a CSSA. In response, the Bolsa expressed a willingness to enter into a surveillance sharing agreement but indicated that it was unable to provide certain information that is required as part of a CSSA. As a result of being unable to secure a CSSA with the Bolsa, the Exchange requested permission to rely for a pilot period on the MOU and the Exchange agreed to use its best efforts that during this period to obtain a CSSA with the Bolsa, which would reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identify; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

On other occasions, the Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a CSSA. For example, the Exchange previously attempted to enter into a CSSA with the Bolsa around the time the Exchange sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised of stocks trading on the Bolsa.[10] Since the Bolsa was unable to provide a CSSA, the Commission allowed the Exchange to rely on the MOU between the SEC and CNBV.

The Commission noted in the Approval Order regarding the CBOE Mexico 30 Index that, in cases where it would be impossible to secure a CSSA, the Commission has relied in the past on surveillance sharing agreements between the relevant regulators. The Commission further noted in the Approval Order that, pursuant to the terms of the MOU, it was the Commission's understanding that both the Commission and the CNBV could acquire information from and provide information to the other, similar to that which would be required in a CSSA between exchanges. Therefore, should CBOE need information on Mexican trading in the component securities of the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.

The practice of relying on surveillance agreements between regulators when a foreign exchange was unable or unwilling to provide a CSSA was affirmed by the Commission in the Commission's New Product Release.[11] In the New Product Release, the Commission noted that if securing an information sharing agreement is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. The Commission also noted that the Commission might determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator.

Given the Exchange's current inability to enter into a CSSA with the Bolsa, the Exchange requests permission to rely on a pilot basis on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities for the component securities in the Fund that trade on the Bolsa until the Exchange is able to secure a CSSA with the Bolsa. The Exchange believes this request is reasonable because the Commission has already acknowledged that the MOU permits both the Commission and the CNBV to acquire information from and provide information to the other, which is similar to that which would be required in a surveillance sharing agreement between exchanges.

Additionally, if the Commission approves the listing of the Fund on a pilot basis, during this period, the Exchange represents that it will continue its efforts to obtain a CSSA with the Bolsa. The Exchange also represents that it will regularly update the Commission on the status of its discussions with the Bolsa. The Commission's approval of this request would otherwise render the Fund compliant with all of the Listing Standards.[12]

[8] *See* Exchange Act Release No. 34–53621 (April 10, 2006), 71 FR 79568 (April 14, 2006) (approving 60 day pilot listing and trading, until June 9, 2006); *see also* Exchange Act Release No. 34–53960 (June 1, 2006), 71 FR 33322 (June 8, 2006) (continuation of pilot program for additional 90 days, until September 7, 2006); *see also* Exchange Act Release No. 34–54347 (Aug. 22, 2006), 71 FR 51242 (Aug. 29, 2006) (continuation of pilot program for additional 90 days, until December 7, 2006); *see also* Exchange Act Release No. 34–54876 (Dec. 5, 2006), 71 FR 74968 (Dec. 13, 2006) (continuation of pilot program for additional six months, until June 7, 2007).

[9] The CNBV is the successor to the Comision Nacional y de Valores of Mexico, which was merged with the Mexican Banking Commission in April 1995 to form the CNBV. *See* Exchange Act Release No. 36415, at n.23 (Oct. 25, 1995), 60 FR 55620 (Nov. 1, 1995) (approval order for SR–CBOE–95–045). The Bolsa falls within the regulatory oversight of CNBV.

[10] *See* Exchange Act Release No. 36415 (Oct. 25, 1995), 60 FR 55620 (Nov. 1, 1995) (approval order for SR–CBOE–95–045).

[11] *See* n. 4, *supra.*

[12] The Exchange notes that the component securities of the Fund change periodically. Therefore, the Exchange may in fact have in place CSSAs that would otherwise cover the percent weighting requirements set forth in the Listing Standards for securities not trading on the Bolsa. In this event, the Fund would satisfy all of the Listing Standards and reliance on an approval order for the Fund would be unnecessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [13] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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:

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–CBOE–2006–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–95 and should be submitted on or before April 16, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The listing of the Fund Options does not satisfy CBOE Rule 5.3.06(A), which requires that: ''any non-U.S. component securities of the index or portfolio on which the Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.'' Although the Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information sharing agreement, it is not clear that that CBOE has exhausted all avenues of discussion with foreign markets, including Bolsa, in order to obtain such an agreement. Indeed, with regard to Bolsa, conditions may have changed in the time period since CBOE last raised the issue with Bolsa in 1995 such that Bolsa now would be able to entering a comprehensive surveillance agreement with CBOE.

Consequently, the Commission has determined to approve CBOE's listing and trading of Fund Options for a six-month pilot period during which time CBOE may rely on the MOU with respect to Fund components trading on Bolsa. During this period, the Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identify; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

The Exchange also represents that it will regularly update the Commission on the status of its negotiations with Bolsa. In approving the proposed rule change, the Commission notes that CBOE currently has in place surveillance agreements with foreign exchanges that cover 48.10% of the securities in the Fund and that the Index upon which the Fund is based appears to be a broad-based index.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with the Bolsa during a six-month pilot period in which the Exchange will rely on the MOU.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the

[13] 15 U.S.C. 78a *et seq.*

[14] 15 U.S.C. 78(f)(b).

[15] 15 U.S.C. 78(f)(b)(5).

[16] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] *Id.*

proposed rule change (SR–CBOE–2006–95), as modified by Amendment Nos. 1 and 2, be, and it hereby is approved on an accelerated basis for a six-month pilot period ending on September 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5423 Filed 3–23–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55495; File No. SR–NASD–2007–023]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Amend the By-Laws of NASD To Implement Governance and Related Changes To Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.

March 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend the By-Laws of NASD (''NASD By-Laws'') to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (''NYSE Regulation''). The proposed rule change also would make limited conforming changes to the By-Laws of NASD Regulation, Inc. (''NASD Regulation By-Laws'').

The text of the proposed rule change is available on the NASD's Web site (*http://www.nasd.com*), at the principal office of NASD, and at the Commission's Public Reference Room. The text of Exhibit 5 of the proposed rule change is also available on the Commission's Web site (*http://www.sec.gov*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Reasons for the Transaction

The securities industry—both domestically and internationally—is in the midst of dramatic change. As the industry changes, it has become clear that the self-regulatory organization (''SRO'') model must be adapted to ensure efficient and effective regulation. At the moment, both NASD and NYSE Regulation oversee the activities of U.S.-based broker-dealers doing business with the public, approximately 170 of which are regulated by both organizations. The result is a duplicative, sometimes conflicting system that makes inefficient use of resources and, as such, can be detrimental to the ultimate goal of investor protection.

NASD has long supported the idea of one SRO having responsibility for all member firm regulation.[3] At the same time, the SEC, Congress, securities firms, and independent observers have long encouraged greater efficiencies, clarity and cost savings in the regulation of America's financial markets. For these reasons, NASD and NYSE Regulation joined together proactively to design a system that would better meet the needs of today's investors and securities firms.

With the support and encouragement of the SEC, NASD and NYSE Group, Inc. (''NYSE Group'') representatives began meeting in June 2006 to discuss options for changes to the self-regulatory system. A determination was made that the scope of the discussions should be limited to eliminating redundant member regulation and not to combine the market regulatory responsibilities of NASD and NYSE Regulation.

On November 28, 2006, NASD and the NYSE Group announced the plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public (the ''Transaction'').[4] This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

The goals of the consolidation plan are to:

- Establish a new organization that will be the single SRO for all securities firms doing business with the public in the U.S.;
- Build and sustain the confidence critical to the operation of vibrant capital markets;
- Increase efficient, effective, and consistent regulation of securities firms;
- Provide cost savings to securities firms of all sizes; and
- Strengthen investor protection and market integrity.

None of NASD's current functions and activities will be eliminated as a result of the Transaction. The new organization will be responsible for:

- Regulatory oversight of all securities firms that do business with the public;
- Professional training, testing and licensing of registered persons;
- Arbitration and mediation;
- Market regulation by contract for The Nasdaq Stock Market, Inc. (''Nasdaq''), the American Stock Exchange LLC, and the International Securities Exchange, LLC; and
- Industry utilities, such as Trade Reporting Facilities and other over-the-counter operations.

The consolidation plan addresses key issues raised in the SEC's 2004 *Concept*

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASD's comment letter dated March 15, 2005 in response to the SEC's Concept Release Concerning Self-Regulation, Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (File No. S7–40–04).

[4] At the closing of the Transaction, NASD will adopt a new corporate name. The proposed rule change refers to the newly named entity as the ''New SRO.''

Release Concerning Self-Regulation: (1) The inherent conflicts of interest between SRO regulatory operations and members, market operations, issuers and stockholders; (2) the costs and inefficiencies of multiple SROs, arising from multiple SRO rulebooks, inspection regimes and staff; and (3) the funding SROs have available for regulatory operations and the manner in which SROs allocate revenue to regulatory operations.[5]

The closing of the Transaction and the consolidation of the member firm regulatory functions of the two organizations is subject to the SEC's approval of this proposed rule change, the execution of definitive agreements between NASD and NYSE Group and obtaining certain additional regulatory approvals.[6]

Composition of the New SRO Board of Governors During the Transitional Period

The proposed rule change will implement the governance changes at the combined organization, including a Board structure that balances public and industry representation, and designates certain governor seats to represent member firms of various sizes. As further described below, the new governance structure guarantees industry participation that provides for fair and balanced member representation on the Board.

For a transitional period commencing on the date of closing of the Transaction and ending on the third anniversary of the date of closing (the ''Transitional Period''), the New SRO Board of Governors (''New SRO Board'') will consist of 23 governors as follows: (1) Eleven of the governors will be ''Public Governors''; (2) ten of the governors will be ''Industry Governors''; and (3) two of the governors will initially be Richard G. Ketchum, Chief Executive Officer (''CEO'') of NYSE Regulation and Mary L. Schapiro, CEO of NASD. Mr. Ketchum will serve as Non-Executive Chairman of the New SRO for a term of three years. Ms. Schapiro will serve as CEO of the New SRO.

The eleven Public Governors will have no material business relationship with a broker or dealer or an SRO registered under the Exchange Act.

Of the ten Industry Governors, (1) Three will be registered with a member that employs 500 or more registered persons (the ''Large Firm Governors''); (2) one will be registered with a member that employs at least 151 and no more than 499 registered persons (the ''Mid-Size Firm Governor''); (3) three will be registered with a member that employs at least one and no more than 150 registered persons (the ''Small Firm Governors''); (4) one will be associated with a floor member of the New York Stock Exchange (the ''Floor Member Governor''); (5) one will be associated with an independent dealer or insurance affiliate (the ''Independent Dealer/Insurance Affiliate Governor''); and (6) one will be associated with an investment company affiliate (the ''Investment Company Affiliate Governor'').

The Industry Governors and Public Governors will be appointed or nominated during the Transitional Period as follows:

- The three Small Firm Governors will be nominated by the NASD Board and elected by members that have at least one and no more than 150 registered persons; provided that members of that size also can nominate such candidates.
- The one Mid-Size Firm Governor will be nominated jointly by the Board of Directors of NYSE Group (''NYSE Group Board'') and the NASD Board and elected by members that have at least 151 and no more than 499 registered persons; provided that members of that size also can nominate such candidates.
- The three Large Firm Governors will be nominated by the NYSE Group Board and elected by members that have 500 or more registered persons; provided that members of that size also can nominate such candidates.
- Five Public Governors will be appointed by the NYSE Group Board.
- Five Public Governors will be appointed by the NASD Board.
- One Public Governor will be appointed jointly by the NYSE Group Board and the NASD Board.
- The one Floor Member Governor will be appointed by the NYSE Group Board.
- The one Independent Dealer/Insurance Affiliate Governor will be appointed by the NASD Board.
- The one Investment Company Affiliate Governor will be appointed jointly by the NYSE Group Board and the NASD Board.

Effective as of closing of the Transaction, the NYSE Group Board and the NASD Board in office prior to the closing will appoint the Public Governors and Industry Governors they, either individually or jointly, have the power to appoint. The Public Governors will hold office for the Transitional Period. The three Large Firm Governors, three Small Firm Governors and one Mid-Size Governor will be elected as Governors at the first annual meeting of members following the closing, which is expected to be held within ninety days after closing of the Transaction and will hold office until the first annual meeting of members following the Transitional Period. During the interim period from closing of the Transaction until the annual meeting, these seven seats will be filled by three interim Industry Governors appointed by the NASD Board prior to the closing of the Transaction from industry governors currently on the NASD Board, three interim Industry Governors appointed by the NYSE Group Board and one interim Industry Governor jointly appointed by the NYSE Group Board and the NASD Board prior to the closing of the Transaction.

As a result of the NASD By-Law amendments, members will no longer have the ability to vote for all New SRO Board candidates in elections, but will have an opportunity to vote on designated seats on the New SRO Board. Specifically, firms will vote for industry nominees that are similar in size to their own firm. This means that small firms and large firms will vote for candidates running for the seats reserved for their firm size and the mid-sized firms will likewise vote for the mid-sized firm seat. All other New SRO Board seats will be appointed as described above. All members will continue to have the ability to vote on any future amendments to the New SRO By-Laws, as well as in district elections.

The New SRO Board will have a Governor who will preside over executive sessions of the New SRO Board in the event the Non-Executive Chairman is recused (''Lead Governor''). The Lead Governor will be selected by the New SRO Board, after consultation with the CEO. The Board, the CEO, the Non-Executive Chairman and the Lead Governor will have the authority to call meetings of the New SRO Board. Both the CEO and Non-Executive Chairman, and for matters from which the CEO and Non-Executive Chairman are recused from considering, the Lead Governor, will have the authority to place items on the New SRO Board agendas.

[5] *See supra* note 3.

[6] On March 7, 2007, NASD and NYSE Group filed notification reports with the Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The waiting period for such a filing will terminate 30 calendar days after the filing, unless the waiting period is extended. NASD believes that the completion of the Transaction will not violate the antitrust laws. NASD also has received a favorable ruling by the Internal Revenue Service that the Transaction will not affect the tax-exempt status of NASD or NASD Regulation. NASD and NYSE Group will seek to satisfy all regulatory filing obligations and observe any required waiting periods prior to the completion of the Transaction.

Governor Vacancies During the Transitional Period

In the event of a vacancy in the governor position held by the CEO of NYSE Regulation during the Transitional Period, the then CEO of NYSE Regulation will serve as a governor for the remainder of the Transitional Period. If the CEO of NYSE Regulation as of closing of the Transaction ceases to occupy the office of Non-Executive Chairman for any reason during the Transitional Period, then his successor as Non-Executive Chairman shall be selected by and from a committee comprised of the Governors that were appointed or nominated by the NYSE Group Board, with the exception that those Governors that also serve as NYSE Group directors may not become Non-Executive Chairman nor may his successor as CEO of NYSE Regulation become Non-Executive Chairman.

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor, or the Small Firm Governors during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NYSE Group Board in the case of a Large Firm Governor vacancy; such vacancy shall only be filled by the Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee in the case of a Mid-Size Firm Governor vacancy; or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NASD Board in the case of a Small Firm Governor vacancy. In the event the remaining term of office of any such governor is more than twelve months, nominations shall be made as set forth above, but such vacancy will be filled by the New SRO members entitled to vote on such governor position at a meeting of such members called to fill the vacancy.

In the event of any vacancy among the Floor Member Governor, the Investment Company Affiliate Governor or the Independent Dealer/Insurance Affiliate Governor during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NYSE Group Board in the case of a Floor Member Governor vacancy; such vacancy shall only be filled by the New SRO Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee in the case of an Investment Company Affiliate Governor vacancy; or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of other Governors appointed or nominated by the NASD Board in the case of an Independent Dealer/Insurance Affiliate Governor vacancy.

In the event of any vacancy among those Public Governors appointed by the NYSE Group Board, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NYSE Group Board. In the event of any vacancy among those Public Governors appointed by the NASD Board, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board comprised of the other Governors appointed or nominated by the NASD Board. In the event of any vacancy of the Public Governor position jointly appointed by the NYSE Group Board and the NASD Board, such vacancy shall only be filled by the New SRO Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee.

Composition of the New SRO Board After the Transitional Period

Upon the expiration of the Transitional Period, the term of office of the CEO of NYSE Regulation as a member of the New SRO Board will automatically terminate and the authorized number of members of the New SRO Board will be reduced by one.[7]

As of the first annual meeting of members following the Transitional Period, the Large Firm Governors, the Mid-Size Firm Governor and the Small Firm Governors will be elected into three classes. The composition of the classes will be arranged as follows:

- The first class, being comprised of one Large Firm Governor and one Small Firm Governor, will be elected for a term of office expiring at the first succeeding annual meeting of members;
- The second class, being comprised of one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor, will be elected for a term of office expiring at the second succeeding annual meeting of members; and
- The third class, being comprised of one Large Firm Governor and one Small Firm Governor, will be elected for a term of office expiring at the third succeeding annual meeting of members.

While these classes are designed to ensure staggered board seats, at no time will there be less than ten Industry Governor positions on the New SRO Board. At each annual election following the first annual meeting of members after the Transitional Period, Large Firm Governors, Small Firm Governors, and Mid-Size Firm Governors will be elected for a term of three years to replace those whose terms expire.

As of the first annual meeting of members following the Transitional Period, the Public Governors, the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor, and the Investment Company Affiliate Governor (the ''Appointed Governors'') will be divided by the New SRO Board into three classes, as equal in number as possible, with the first class holding office until the first succeeding annual meeting of members, the second class holding office until the second succeeding annual meeting of members, and the third class holding office until the third succeeding annual meeting of members. Each class will initially contain as equivalent a number as possible of Appointed Governors who were members of the New SRO Board appointed or nominated by the NYSE Group Board or are successors to such governor positions, on the one hand, and Appointed Governors who were members of the New SRO Board appointed or nominated by the NASD Board or are successors to such governor positions, on the other hand, to the extent the New SRO Board determines such persons are to remain Governors after the Transitional Period. At each annual election following the first annual meeting of members following the Transitional Period, Appointed Governors will be appointed by the New SRO Board for a term of three years to replace those whose terms expire.

Role and Composition of the Nominating Committee

The Nominating Committee will be a committee of the New SRO Board and will replace the current National Nominating Committee. For the first

[7] Under Article VII, Section 4 of the New SRO By-Laws (Composition and Qualification of the Board), the total number of Governors is determined by the Board of Governors, with such number being no fewer than 16 nor more than 25 Governors. The number of Public Governors must exceed the number of Industry Governors.

annual meeting following the closing of the Transaction, nominations for the seven elected industry seats will not be made by the Nominating Committee, but instead by the NASD Board and the NYSE Group Board as constituted prior to the closing of the Transaction. In addition, prior to the closing, the NASD Board and the NYSE Group Board will identify and appoint persons for the eleven public seats and three remaining industry seats.

During the Transitional Period, the Nominating Committee will be responsible solely for nominating persons to fill vacancies in governor seats for which the full New SRO Board has the authority to fill. Following the Transitional Period, the Nominating Committee will be responsible for nominating persons for appointment or election to the New SRO Board, as well as nominating persons to fill vacancies in appointed or elected governor seats.

During the Transitional Period, members of the Nominating Committee will be appointed jointly by the New SRO CEO and the CEO of NYSE Regulation as of closing of the Transaction (or his duly appointed successor as Chair of the New SRO Board), subject to ratification of the appointees by the New SRO Board. Following the Transitional Period, the composition of the Nominating Committee will be determined by the New SRO Board. At all times, the number of Public Governors on the Nominating Committee must equal or exceed the number of Industry Governors on the Nominating Committee. In addition, the Nominating Committee must at all times be comprised of a number of governors that is a minority of the entire New SRO Board. The New SRO CEO may not be a member of the Nominating Committee.

Proposed Changes and Comparison to Current NASD By-Laws

The following chart summarizes the material proposed changes as compared to the current NASD By-Laws and the timing of their effectiveness. The following is only a summary; the text of the proposed rule change is available on the NASD's Web site (*http://www.nasd.com*), at the principal office of NASD, and at the Commission's Public Reference Room. The text of Exhibit 5 of the proposed rule change is also available on the Commission's Web site (*http://www.sec.gov*).

Topic	Current By-Laws	By-Laws effective at closing and for the transitional period	By-Laws effective at the expiration of the transitional period
Composition and Qualification of the Board.	The Board consists of no fewer than 15 nor more than 25 Governors, comprising (i) The Chief Executive Officer of the NASD, (ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of the NASD to the Board of Governors is advisable, a second officer of the NASD, (iii) the President of NASD Regulation, (iv) the Chair of the National Adjudicatory Council and (v) no fewer than 12 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, a representative of a national retail firm, a representative of a regional retail or independent financial planning member firm, a representative of a firm that provides clearing services to other NASD members, and a representative of an NASD member having not more than 150 registered persons. The number of Non-Industry Governors must exceed the number of Industry Governors. If the number of Industry and Non-Industry Governors is 13–15, the Board must include at least four Public Governors. If the number of Industry and Non-Industry Governors is 16–17, the Board must include at least five Public Governors. If the number of Industry and Non-Industry Governors is 18–23, the Board must include at least six Public Governors.	As of Closing, and for the Transitional Period, the Board consists of 23 authorized members, consisting of (i) The Chief Executive Officer of the NASD, (ii) the Chief Executive Officer of NYSE Regulation, Inc., (iii) eleven Public Governors, (iv) a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor and (v) three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors; provided, however that the Board will not include such Small Firm Governors, Mid-Size Firm Governor or Large Firm Governors, but rather will include three persons, who immediately prior to the Closing are Industry Governors, selected by the Board in office prior to the Closing, three persons, who immediately prior to the Closing qualified as Industry Governors pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc., and one person, who immediately prior to the Closing qualified as an Industry Governor pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly, until the election of such Small Firm Governors, Mid-Size Firm Governor and Large Firm Governors at the first annual meeting of members following the Closing. [NOTE: To allow for the possibility of a contested election, the nominees for the Small Firm Governor, Mid-Size Firm Governor or Large Firm Governor will be voted upon at an annual meeting of members which shall be held as soon as practicable after the closing of the Transaction and is expected to be held within ninety days of the closing of the Transaction.].	Same as By-Laws for the Transitional Period, except that: (i) The Chief Executive Officer of NYSE Regulation, Inc. is no longer a Governor; (ii) the total number of Governors is determined by the Board of Governors, with such number being no fewer than 16, nor more than 25 and (iii) the number of Public Governors is determined by the Board of Governors, provided such number must exceed the number of Industry Governors.

Topic	Current By-Laws	By-Laws effective at closing and for the transitional period	By-Laws effective at the expiration of the transitional period
Term of Office of Governors	The Chief Executive Officer and, if appointed, the second officer of the NASD, and the President of NASD Regulation serve as Governors until a successor is elected, or until death, resignation or removal. The Chair of the National Adjudicatory Council serves as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal. The Governors elected by the members of the NASD are divided into three classes and hold office for a term of no more than three years, such term being fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal.	The Chief Executive Officer serves as a Governor until a successor is elected, or until death, resignation or removal. The Chief Executive Officer of NYSE Regulation, Inc. as of Closing serves as a Governor during the Transitional Period, until death, resignation or removal. Effective as of Closing, the Board of Directors of NYSE Group, Inc. appoints the NYSE Public Governors, the Board in office prior to the Closing appoints the NASD Public Governors and the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing jointly appoint the Joint Public Governor. Effective as of Closing, the Board of Directors of NYSE Group, Inc. appoints the Floor Member Governor, the Board of Governors in office prior to the Closing appoints the Independent Dealer/Insurance Affiliate Governor and the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly appoint the Investment Company Affiliate Governor. The Public Governors and the Floor Member Governor, the Investment Company Affiliate Governor and the Independent Dealer/Insurance Affiliate Governor appointed in accordance with the preceding paragraphs hold office for the Transitional Period, or until death, resignation, disqualification or removal. Three Large Firm Governors, three Small Firm Governors and one Mid-Size Governor are elected as Governors at the first annual meeting of members following the Closing (the ''Initial Member Elected Governors''). The Initial Member Elected Governors hold office until the first annual meeting of members following the Transitional Period, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal. Upon the expiration of the Transitional Period, the term of office of the Chief Executive Officer of NYSE Regulation, Inc. as a member of the Board automatically, and without any further action, terminates, such person no longer is a member of the Board and the authorized number of members of the Board automatically is reduced by one.	The Chief Executive Officer serves as a Governor until a successor is elected, or until death, resignation or removal. Public Governors and the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor (the ''Appointed Governors'') are appointed by the Board. As of the first annual meeting of members following the Transitional Period, the Appointed Governors are divided by the Board into three classes, as equal in number as possible, with the first class holding office until the first succeeding annual meeting of members, the second class holding office until the second succeeding meeting of members and the third class holding office until the third succeeding annual meeting of members, or until a successor is duly appointed and qualified, or until death, resignation, disqualification or removal. Each class initially contains as equivalent a number as possible of Appointed Governors who were members of the NYSE Group Committee during the Transitional Period or are successors to such Governor positions, on the one hand, and Appointed Governors who were members of the NASD Group Committee during the Transitional Period or are successors to such Governor positions, on the other hand, to the extent the Board determines such persons are to remain Governors after the Transitional Period. At each annual election following the first annual meeting of members following the Transitional Period, Appointed Governors are appointed by the Board for a term of three years to replace those whose terms expire. As of the first annual meeting of members following the Transitional Period, the Large Firm Governors, the Mid-Size Firm Governor and the Small Firm Governors are divided into three classes, as equal in number as possible, with the first class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the first succeeding annual meeting of members, the second class, being comprised of one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor, holding office until the second succeeding annual meeting of members and the third class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the third succeeding annual meeting of members, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal. At each annual election following the first annual meeting of members following the Transitional Period, Large Firm Governors, Small Firm Governors and the Mid-Size Firm Governor are elected for a term of three years to replace those whose terms expire.

Topic	Current By-Laws	By-Laws effective at closing and for the transitional period	By-Laws effective at the expiration of the transitional period
Filling of Vacancies	If an elected Governor position becomes vacant, whether because of death, disability, disqualification, removal or resignation, the National Nominating Committee nominates, and the Board elects by majority vote of the remaining Governors then in office, a person satisfying the classification (Industry, Non-Industry or Public Governor) for the governorship to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement is required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position stands for election in the next annual election.	In the event the Chief Executive Officer of NYSE Regulation, Inc. as of Closing no longer serves as a Governor during the Transitional Period, the then Chief Executive Officer of NYSE Regulation, Inc. serves as a Governor for the remainder of the Transitional Period, until death, resignation or removal. In the event of any vacancy among the NYSE Public Governors, the Joint Public Governor or NASD Public Governors during the Transitional Period, such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NYSE Group Committee in the case of a vacant NYSE Public Governor position, such vacancy is only filled by the Board, and nominations for persons to fill such vacancy are made by the Nominating Committee, in the case of a vacant Joint Public Governor position or such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NASD Group Committee in the case of a vacant NASD Public Governor position. In the event of any vacancy among the Floor Member Governor, the Investment Company Affiliate Governor or the Independent Dealer/Insurance Affiliate Governor during the Transitional Period, such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NYSE Group Committee in the case of a Floor Member Governor vacancy, such vacancy is only filled by the Board, and nominations for persons to fill such vacancy are made by the Nominating Committee, in the case of an Investment Company Affiliate Governor vacancy or such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NASD Group Committee in the case of an Independent Dealer/Insurance Affiliate Governor vacancy. In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors during the Transitional Period, such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NYSE Group Governor Committee in the case of a Large Firm Governor vacancy, such vacancy is only filled by the Board, and nominations for persons to fill such vacancy are made by the Nominating Committee, in the case of the Mid-Size Firm Governor vacancy or such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NASD Governor Committee in the case of a Small Firm Governor vacancy: provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, nominations shall be made as set forth above in this paragraph, but such vacancy is filled by the members of the New SRO entitled to vote thereon at a meeting thereof convened to vote thereon.	In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors, such vacancy is only filled by the Large Firm Governor Committee in the case of a Large Firm Governor vacancy, the Board in the case of a Mid-Size Firm Governor vacancy or the Small Firm Governor Committee in the case of a Small Firm Governor vacancy; provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, such vacancy is filled by the members of the New SRO entitled to vote thereon at a meeting thereof convened to vote thereon. All other vacancies are filled by the Board.

Topic	Current By-Laws	By-Laws effective at closing and for the transitional period	By-Laws effective at the expiration of the transitional period
Nominations	The National Nominating Committee, which is not a committee of the Board, nominates and, in the event of a contested election, may support: Industry, Non-Industry and Public Governors for each vacant or new Governor position on the NASD Board for election by the membership; Industry, Non-Industry and Public Directors for each vacant or new position on the NASD Regulation Board and the NASD Dispute Resolution Board for election by the stockholder; and Industry, Non-Industry, and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board.	In the case of the first annual meeting of members following the Closing, nominations are by the Board of Directors of NYSE Group, Inc. with respect to Large Firm Governors, jointly by the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing with respect to the Mid-Size Firm Governor and by the Board in office prior to the Closing with respect to Small Firm Governors.	The Nominating Committee, which is a committee of the Board, nominates and, in the event of a contested election, may support: Large Firm, Mid-Size Firm, Small Firm, Public, Floor Member, Independent Dealer/Insurance Affiliate and Investment Company Affiliate Governors for each vacant or new Governor position on the New SRO Board; Industry and Public Directors for each vacant or new position on the NASD Regulation Board and the NASD Dispute Resolution Board for election by the stockholder; and Industry and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board.
Composition and Qualifications of the Nominating Committee.	The National Nominating Committee consists of no fewer than six and no more than nine members. The number of Non-Industry committee members equals or exceeds the number of Industry committee members. If the National Nominating Committee consists of six members, at least two must be Public committee members. If the National Nominating Committee consists of seven or more members, at least three must be Public committee members. No officer or employee of the NASD serves as a member of the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members are current members of the NASD Board. A National Nominating Committee member may not simultaneously serve on the National Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the National Nominating Committee.	The Nominating Committee is jointly populated by the Chief Executive Officer and the Chief Executive Officer of NYSE Regulation, Inc. as of Closing (or his duly appointed or elected successor as Chair of the Board), subject to ratification of the appointees by the Board. The number of Public Governors on the Nominating Committee equals or exceeds the number of Industry Governors on the Nominating Committee. The Nominating Committee is at all times comprised of a number of members which is a minority of the entire Board and the Chief Executive Officer may not be a member of the Nominating Committee.	The Nominating Committee consists of such number of members of the Board as the Board determines from time to time. The number of Public Governors on the Nominating Committee equals or exceeds the number of Industry Governors on the Nominating Committee. The Nominating Committee is at all times comprised of a number of members which is a minority of the entire Board and the Chief Executive Officer may not be a member of the Nominating Committee.
Required Board Committees	NASD is required to have an Audit Committee and a National Nominating Committee.	New SRO is required to have the following committees of the Board: the NASD Group Committee; The NYSE Group Committee; the Small Firm Governor Committee and the Large Firm Governor Committee, which have the authority described above in ''Filling of Vacancies'' and below in ''Chair.'' New SRO also is required to have Audit, Finance and Nominating Committees and, during the first year of the Transitional Period or as may be extended thereafter by the Board, an Integration Committee.	New SRO is required to have the following committees of the Board: The Small Firm Governor Committee and the Large Firm Governor Committee, which have the authority described above in ''Filling of Vacancies.'' New SRO also is required to have Audit, Finance and Nominating Committees.

Topic	Current By-Laws	By-Laws effective at closing and for the transitional period	By-Laws effective at the expiration of the transitional period
Composition of Board Committees	Unless otherwise provided in the By-Laws, any committee having the authority to exercise the powers and authority of the Board has a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the Board.	The NASD Group Committee, the NYSE Group Committee, the Small Firm Governor Committee and the Large Firm Governor Committee are composed as described below in the description of such defined terms. Unless otherwise provided in the By-Laws, any other committee having the authority to exercise the powers and authority of the Board has a number of Public Governors as members thereof in excess of the number of Industry Governors which are members thereof. In addition, any committee of the Board having the authority to exercise the powers and authority of the Board (with the exception of the Large Firm Governor Committee, the Small Firm Governor Committee, the NASD Group Committee and the NYSE Group Committee) also has (i) a percentage of members (to the nearest whole number of committee members) that are members of the NASD Group Committee at least as great as the percentage of Governors on the Board that are members of the NASD Group Committee; and (ii) a percentage of members (to the nearest whole number of committee members) that are members of the NYSE Group Committee at least as great as the percentage of Governors on the Board that are members of the NYSE Group Committee.	The Small Firm Governor Committee and the Large Firm Governor Committee are composed as described below in the description of such defined terms. Unless otherwise provided in the By-Laws, any other committee having the authority to exercise the powers and authority of the Board has a number of Public Governors as members thereof in excess of the number of Industry Governors which are members thereof.
Executive Committee Composition	The Executive Committee consists of no fewer than five and no more than eight Governors. The Executive Committee includes the Chief Executive Officer of the NASD, and at least one Director of NASD Regulation. The Executive Committee has a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.	The Executive Committee consists of no fewer than five and no more than eight Governors. The Executive Committee includes the Chief Executive Officer of the New SRO and the Chair of the Board.	Same as Transitional Period.
Integration Committee	No such committee	The Board shall appoint an Integration Committee with a term of one year unless continued for a longer period by resolution of the Board. The Chair of the Board shall be the Chair of the Integration Committee.	Not applicable.
Annual Meetings of Members	An annual meeting of members of the NASD is held on such date and at such place as the Board designates. The business of the annual meeting includes the election of the members of the Board, Industry, Non-Industry and Public, by all of the members of the NASD.	Except for the first annual meeting following the Closing at which Large Firm Governors, the Mid-Size Firm Governor and Small Firm Governors are elected, there are no annual meetings of members during the Transitional Period. At such first annual meeting, Small Firm members are only entitled to vote for the election of Small Firm Governors, Mid-Size Firm members are only entitled to vote for the election of the Mid-Size Firm Governor and Large Firm members are only entitled to vote for the election of Large Firm Governors.	An annual meeting of members of the New SRO is held on such date and at such place as the Board designates. The business of the annual meeting includes the election of the Small, Mid-Size and Large Firm members of the Board. Small Firm members are only entitled to vote for the election of Small Firm Governors, Mid-Size Firm members are only entitled to vote for the election of the Mid-Size Firm Governor and Large Firm members are only entitled to vote for the election of Large Firm Governors.
Authority to Call Special Meetings of the Board.	Not specified	Special meetings of the Board of the New SRO may be called by the Board, the Chief Executive Officer of the New SRO, the Chair or the Lead Governor.	Same as the Transitional Period.

Topic	Current By-Laws	By-Laws effective at closing and for the transitional period	By-Laws effective at the expiration of the transitional period
Authority to Include Items on the Agenda for Meetings of the Board.	Not specified	Each of the Chief Executive Officer of the New SRO and the Chair, and with respect to matters from which the Chief Executive Officer of the New SRO and the Chair recuse themselves, the Lead Governor, has the authority to include matters on the agenda of a meeting of the Board.	Same as the Transitional Period.
Chair	Elected by the Board from among its members.	The Chair is the Chief Executive Officer of NYSE Regulation, Inc. as of Closing so long as he remains a Governor. In the event the Chief Executive Officer of NYSE Regulation, Inc. as of the Closing ceases to be a Chair during the Transitional Period, subject to the Restated Certificate of Incorporation and the By-Laws, the Chair is selected by the NYSE Group Committee from among its members; provided that the Chair so selected may not be a member of the Board of Directors of NYSE Group, Inc. nor may the successor Chief Executive Officer of NYSE Regulation, Inc. serve as Chair.	Elected by the Board from among its members.

The proposed amendments to the NASD By-Laws also include changes or additions to certain defined terms. In addition to changes to accommodate the new governance structure, the proposed rule change would amend the definition of ''disqualification'' in the NASD By-Laws to conform to the federal securities laws, such that any person subject to a statutory disqualification under the Exchange Act also would be subject to disqualification under NASD rules.[8]

These changes or additions to the defined terms in the NASD By-Laws include the following:

Term	Current By-Laws	By-Laws effective at closing and through and after the transitional period
Closing	Not applicable	Means the closing of the consolidation of certain member firm regulatory functions of NYSE Regulation, Inc. and NASD.
Disqualification	As currently written, the definition lists some, but not all, of the grounds for statutory disqualification contained in Section 3(a)(39) of the Exchange Act.	Means the definition that is contained in Section 3(a)(39) of the Exchange Act. The purpose of the amendment is to conform the By-Laws directly to the statutory provision that NASD is obligated to enforce, as well as to conform the By-Laws to any subsequent amendments to the statute.
Floor Member Governor	Not applicable	Means a member of the Board appointed as such who is a person associated with a member (or a firm in the process of becoming a member) which is a specialist or floor broker on the New York Stock Exchange trading floor.
Independent Dealer/Insurance Affiliate Governor	Not applicable	Means a member of the Board appointed as such who is a person associated with a member which is an independent contractor financial planning member firm or an insurance company, or an affiliate of such a member.

[8] NASD will be filing a subsequent rule change to address the applicable eligibility proceedings for persons subject to disqualification as a result of the proposed change in definition.

Term	Current By-Laws	By-Laws effective at closing and through and after the transitional period
Industry Governor or Industry committee member.	Means a Governor (excluding the Chief Executive Officer of the NASD and the President of NASD Regulation) or committee member who: (1) Is or has served in the prior three years as an officer, director or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer or employee of a broker, dealer or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation, or has had any such relationship or provided any such services at any time within the prior three years.	Means the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor and any other Governor (excluding the Chief Executive Officer of the New SRO and, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc.) or committee member who: (1) Is or has served in the prior year as an officer, director (other than as an independent director), employee or controlling person of a broker or dealer, or (2) has a consulting or employment relationship with or provides professional services to a self-regulatory organization registered under the Exchange Act, or has had any such relationship or provided any such services at any time within the prior year.
Investment Company Affiliate Governor	Not applicable	Means a member of the Board appointed as such who is a person associated with a member which is an investment company (as defined in The Investment Company Act of 1940, as amended) or an affiliate of such a member.
Joint Public Governor	Not applicable	Means the one Public Governor to be appointed as such by the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing jointly.
Large, Mid-Size and Small Firms	Not applicable	Mean any broker or dealer admitted to membership in the New SRO which, at the time of determination, has 1–150, 151–499 or 500 or more registered persons, respectively.
Large Firm, Mid-Size Firm and Small Firm Governors.	Not applicable	Mean members of the Board to be elected by Large, Mid-Size, and Small Firm members, respectively, provided, however, that in order to be eligible to serve, a Large Firm, Mid-Size Firm, and Small Firm Governor must be an Industry Governor and must be registered with a member which is a Large Firm, Mid-Size Firm, or Small Firm member, as the case may be.

Term	Current By-Laws	By-Laws effective at closing and through and after the transitional period
Large Firm Governor and Small Firm Governor Committees.	Not applicable	Means a committee of the Board comprised of all of the Large Firm Governors or Small Firm Governors, as the case may be.
Lead Governor	Not applicable	Means a member of the Board elected as such by the Board, provided, however, that any member of the Board who is concurrently serving as a member of the Board of Directors of NYSE Group, Inc. is not eligible to serve as the Lead Governor.
NASD Public Governors and NYSE Public Governors.	Not applicable	Mean the five Public Governors to be appointed as such by the Board in office prior to the Closing and the five Public Governors to be appointed as such by the Board of Directors of NYSE Group, Inc., respectively, effective as of Closing.
NASD Group Committee	Not applicable	Means a committee of the Board comprised of the five Public Governors and the Independent Dealer/Insurance Affiliate Governor appointed as such by the Board in office prior to Closing, and the Small Firm Governors which were nominated for election as such by the Board in office prior to Closing, and in each case their successors.
NYSE Group Committee	Not applicable.	Means a committee of the Board comprised of the five Public Governors and the Floor Member Governor appointed as such by the Board of Directors of NYSE Group, Inc., and the Large Firm Governors which were nominated for election as such by the Board of Directors of NYSE Group, Inc., and in each case their successors.
Non-Industry Governor or Non-Industry committee member.	Means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation) or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Governor or committee member.	Not applicable.
Public Governor or Public committee member	Means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation.	Means any Governor or committee member who is not the Chief Executive Officer of the New SRO or, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc., who is not an Industry Governor and who otherwise has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Exchange Act, other than as a public director of such a self-regulatory organization.
Transitional Period	Not applicable	Means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing.

There also are certain other non-substantive changes reflected in the rule text. For example, each reference to ''the NASD'' or ''NASD'' in the NASD By-Laws will be replaced with ''the Corporation'' in contemplation of the change in the name of the corporation. In addition, each reference to the ''Rules of the Association'' in the NASD By-Laws will be replaced with the ''Rules of the Corporation.'' The effective date of the proposed rule change will be the closing of the Transaction. Assuming SEC approval of the proposed rule change, corresponding changes will be made to NASD's Certificate of Incorporation. The effective date of the corresponding changes to NASD's Certificate of Incorporation also will be the closing of the Transaction.

Proposed Changes to NASD Regulation By-Laws

In 1996, based on recommendations of a committee appointed by the NASD Board, NASD formed its subsidiary NASD Regulation (in addition to the already existing Nasdaq) and adopted the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') to reflect its change

in corporate structure.[9] In 2000, NASD created another subsidiary for its mediation and arbitration functions, NASD Dispute Resolution. Following the closing of the Transaction, the New SRO will evaluate the role and governance structure of the subsidiaries and the ongoing need for the Delegation Plan. At this time, the proposed rule change would make limited conforming changes to the NASD Regulation By-Laws solely to reflect the proposed governance structure of the New SRO Board.

First, in light of the new proposed composition of the New SRO Board, the proposed rule change would amend Section 5.2 of the NASD Regulation By-Laws (Number of Members and Qualifications of the National Adjudicatory Council (''NAC'')) to eliminate the reference that the Chairman of the NAC shall serve as a Governor of the NASD Board for a one-year term. Second, because the Chairman of the NAC may continue to serve as a Director of the NASD Regulation Board, the proposed rule change would eliminate the requirement in Section 4.3 (Qualifications) that only Governors of the NASD Board shall be eligible for election to the NASD Regulation Board. Finally, NASD proposes to amend the statement in Section 4.3 that provides that the CEO of NASD shall be an ex-officio non-voting member of the NASD Regulation Board, to reflect that Ms. Schapiro will occupy both the position of CEO of the New SRO and the President of NASD Regulation. In particular, the proposed rule change would clarify that where the CEO of the New SRO also serves as President of NASD Regulation, then the person shall have all powers, including voting powers, granted to all other Directors pursuant to applicable law, the Restated Certificate of Incorporation, the Delegation Plan and the NASD Regulation By-Laws.

The effective date of the proposed rule change will be the closing of the Transaction.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,[10] in that it provides for the organization of the New SRO in a manner that will permit the New SRO to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by New SRO members and persons associated with members with the Act, the rules and regulations thereunder, New SRO rules and the federal securities laws. NASD further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act[11] in that the amendments are designed to assure a fair representation of the New SRO's members in the selection of its Governors and administration of its affairs, as well as to comply with the public participant requirements of the Act. Moreover, firms that today are regulated by both NASD and NYSE Regulation will benefit from the elimination of the current duplication of regulatory review of these firms. The Transaction, as reflected in the proposed rule change, will further benefit members as it will streamline the broker-dealer regulatory system, combine technologies and permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help to ensure investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2007–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–023 and should be submitted on or before April 16, 2007.

[9] On December 20, 2006, NASD eliminated its delegation of authority to Nasdaq under the Delegation Plan and effectuated complete separation with Nasdaq, including dissolution of NASD's controlling share in Nasdaq.

[10] 15 U.S.C. 78o–3(b)(2).

[11] 15 U.S.C. 78o–3(b)(4).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5422 Filed 3–23–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10829]

Iowa Disaster #IA–00006

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA—1688—DR), dated 03/14/2007.

Incident: Severe Winter Storms.

Incident Period: 02/23/2007 through 03/02/2007.

Effective Date: 03/14/2007.

Physical Loan Application Deadline Date: 05/14/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/14/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Calhoun, Cedar, Chickasaw, Clinton, Des Moines, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hardin, Henry, Howard, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Marion, Marshall, Mitchell, Muscatine, Pocahontas, Poweshiek, Story, Tama, Van Buren, Wapello, Washington, Winnebago, Winneshiek, Worth, Wright.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
The number assigned to this disaster for physical damage is	10829

(Catalog of Federal Domestic Assistance Number: 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–5428 Filed 3–23–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10817]

Oregon Disaster Number OR–00017

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–1683–DR), dated 02/22/2007.

Incident: Severe Winter Storm and Flooding.

Incident Period: 12/14/2006 through 12/15/2006.

Effective Date: 03/16/2007.

Physical Loan Application Deadline Date: 04/23/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oregon, dated 02/22/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Wasco.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number: 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–5427 Filed 3–23–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5729]

Culturally Significant Objects Imported for Exhibition Determinations: ''Edward Hopper''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Edward Hopper'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts, beginning on or about May 6, 2007, until on or about August 19, 2007, the National Gallery of Art, Washington, DC, beginning on or about September 16, 2007, until on or about January 21, 2008, and the Art Institute of Chicago, Chicago, Illinois, beginning on or about February 16, 2008, until on or about May 11, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 20, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs Department of State.

[FR Doc. E7–5485 Filed 3–23–07; 8:45 am]

BILLING CODE 4710–05–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority No. 297]

Delegation by the Secretary of State to the Under Secretary for Arms Control and International Security of Authority To Submit the Annual Report on Moscow Treaty Interpretation

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a) and Executive Order 13313 of July 31, 2003 (68 FR 45151), I hereby delegate to the Under Secretary for Arms Control and International Security the authority to submit the annual report on the implementation of the Moscow Treaty by the United States and Russian Federation pursuant to Condition (2) of the March 6, 2003, Resolution of Advice and Consent to Ratification of the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions (the Moscow Treaty).

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Under Secretary for Policy may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: October 25, 2006.

Condoleezza Rice,

Secretary of State, Department of State.

Editorial Note: This document was received at the Office of the Federal Register on March 21, 2007.

[FR Doc. E7–5489 Filed 3–23–07; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification of Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This proposal establishes requirements for the certification, operation, and maintenance of light-sport aircraft.

DATES: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification of Airmen for the Operation of Light-Sport Aircraft.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0690.

Form(s): 8130–6, 8130–7, 8710–11, 8130–XX, 8710–XX, 337, 8110–14, 8110–28, 8610–2.

Affected Public: A total of 28,449 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.27 hours per response.

Estimated Annual Burden Hours: An estimated 72,582 hours annually.

Abstract: This proposal establishes requirements for the certification, operation, and maintenance of light-sport aircraft. The FAA has proposed establishing a sport pilot certificate and a flight instructor certificate with a sport pilot rating. The FAA also has proposed establishing requirements for student pilots and private pilots to operate these aircraft, and revising the recreational pilot certificate to align it with privileges certificate with ratings for individuals who would inspect and maintain light-sport aircraft. In addition, the FAA has proposed a new category of special airworthiness certificate for light-sport aircraft that meet a consensus standard.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1466 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Federal Aviation Administration, Flight Standards Customer Satisfaction Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. At the request of the FAA, the Flight Standards office (AFS) is planning to conduct a targeted survey of general aviation pilots to measure the change in their use of and satisfaction with the FAA-sponsored Safety Seminar Program.

DATES: Please submit comments by May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Federal Aviation Administration, Flight Standards Customer Satisfaction Survey.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0568.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 5,400 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 585 hours annually.

Abstract: The FAA has initiated customer service surveys throughout the

agency, requiring that every element have contact with their customers to assure that their needs are being met and that service is improved. At the request of the FAA, the Flight Standards office (AFS) is planning to conduct a targeted survey of general aviation pilots to measure the change in their use of and satisfaction with the FAA-sponsored Safety Seminar Program.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1467 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the United States.

DATES: Please submit comments by May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0508.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 6 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the United States.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1468 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Air Taxi and Commercial Operator Airport Activity Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport Improvement Program (AIP), and 49 U.S.C. Part A, Air Commerce Safety, and Part B, Airport Development and Noise.

DATES: Please submit comments by May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0067.

Forms(s): 1800–31.

Affected Public: A total of 375 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.5 hours per response.

Estimated Annual Burden Hours: An estimated 563 hours annually.

Abstract: Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport Improvement Program (AIP), and 49 U.S.C. Part A, Air Commerce Safety, and Part B, Airport Development and Noise.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Divsion, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information

is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1469 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Report of Inspections Required by Airworthiness Directives, Part 39

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances.

DATES: Please submit comments by May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *CarlaMauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, Part 39.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0056.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 1,120 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 2,800 hours annually.

Abstract: Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

ADDRESSES: Send comments to the FAA at the following address; Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1470 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification: Pilots and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information collected is used to determine compliance with applicant eligibility.

DATES: Please submit comments by May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification: Pilots and Flight Instructors.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0021.

Form(s): 8710–1.

Affected Public: A total of 125,500 Respondents.

Frequency: The information is collected biennially.

Estimated Average Burden per Response: Approximately 2.32 hours per response.

Estimated Annual Burden Hours: An estimated 291,340 hours annually.

Abstract: 14 CFR Part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 2, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1471 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. 49 U.S.C. Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity.

DATES: Please submit comments by May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0001.

Forms(s): 7460–1, 7460–2.

Affected Public: A total of 25,000 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2 hours per response.

Estimated Annual Burden Hours: An estimated 15,500 hours annually.

Abstract: 49 U.S.C. Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR Part 77.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 20, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–1472 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Availability of an Environmental Assessment (EA) and Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the Evaluation of Environmental Impacts Associated With Proposed Rehabilitation of Runway 3R–21L at Detroit Metropolitan Wayne County Airport (DTW) located in Romulus, Detroit

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

ACTION: Notice of Availability of an EA and FONSI/ROD for the evaluation of environmental impacts associated with the proposed rehabilitation of Runway 3R–21L at Detroit Metropolitan Wayne County Airport.

SUMMARY: The FAA is making available the EA and FONSI/ROD for the evaluation of environmental impacts associated with proposed rehabilitation of Runway 3R–21L at Detroit Metropolitan Wayne County Airport. The EA was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Orders 1050.1E, ''Environmental Impacts: Policies and Procedures'' and FAA Order 5050.4B, ''NEPA Implementing Instructions for Airport Actions''.

POINT OF CONTACT: Mr. Ernest Gubry, Environmental Protection Specialist, DET–605, Federal Aviation Administration, Detroit Airport District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone number: 734–229–2905.

SUPPLEMENTARY INFORMATION: The FAA is making an EA and FONSI/ROD for the evaluation of environmental impacts associated with the proposed rehabilitation of Runway 3R–21L for the Detroit Metropolitan Wayne County Airport (the Airport), located in Detroit, Michigan. The proposed project consists of the demolition, removal and full-depth replacement of the pavement section for the northern-most 7,600 feet of the 150 feet wide Runway 3R–21L and associated work. The Project is planned to take 175 days and is proposed to start in the spring of 2007. During the 175 day construction period aircraft operations typically assigned to Runway 3R–21L would be reassigned to one of the other parallel runways or the crosswind runways. This would result in Runways 3L–21R, 4R–22L, 4L–22R and 9R–27L being used more often than would typically occur without the Proposed Action and as a result, a temporary increase in the number of aircraft and noise over residences immediately north and east of the airport is anticipated. This temporary operation would not result in the creation of any new air traffic procedures but would result in additional numbers of operations on existing flight tracks during the construction period. Runway 3R–21L will be reconstructed to its original length, width and strength and will not result in increases in operations or changes in types of aircraft using the runway. The flight tracks and percentage of use will also return to their prior usage. These documents will be available for public review during normal business hours at the Detroit Airport District Office, 11677 South Wayne road, Suite 107, Romulus, MI 48174. Please call the point of contact prior to visiting this office.

Issued in Detroit, Michigan, March 24, 2007.

Ernest P. Gubry,

Acting Manager, Detroit Airport District Office FAA, Great Lakes Region.

[FR Doc. 07–1473 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–12]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specific requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the 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 the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 16, 2007.

ADDRESSES: Send comments on the petition 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–2007–27562 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Boylon, ANM–113 (425–227–1152), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356 (for Dassault Aviation), 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 March 19, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Docket No.: FAA–2007–27562.

Petitioner: Dassault Aviation.

Section of 14 CFR Affected: 14 CFR 25.981(a)(3).

Description of Relief Sought: Dassault Aviation is seeking an exemption from § 25.981(a)(3) regarding the structural lightning protection of wing fasteners on Dassault Falcon 7X airplanes.

[FR Doc. 07–1475 Filed 3–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–08]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of petitions seeking relief from specific requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the 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 the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 16, 2007.

ADDRESSES: Send comments on the petition 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–2007–27330 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Frances Shaver (202–267–9681), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591–3356 or Tyneka Thomas (202–267–7626), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591–3356.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 19, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–27330.

Petitioner: Repairtech International, Inc.

Section of 14 CFR Affected: Sections 145.202 and 145.217.

Description of Relief Sought: Petitioner seeks relief to allow use of non-certificated subcontractors to perform special processes for which the repair station is not rated, such as special heat treat, induction heat treat and anodize materials.

[FR Doc. E7–5397 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–10]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specific requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the 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 the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 16, 2007.

ADDRESSES: Send comments on the petition 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–2007–27452 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98057–3356 (for STRONG Aero Engineering), 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 March 19, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–27452.

Petitioner: STRONG Aero Engineering.

Section of 14 CFR Affected: 14 CFR 25.853(d).

Description of Relief Sought: STRONG Aero Engineering is seeking an exemption from § 25.853(d) to permit use of interior materials that do not comply with the head release and smoke emissions requirements, on McDonnell Douglas DC–9–87 (MD–87) airplanes, with certain limitations.

[FR Doc. E7–5495 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2007–27663]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

49 U.S.C. 5310 and 5311—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Nonurbanized Area Formula Program

DATES: Comments must be submitted before May 25, 2007.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Oliver, Office of Program Management, (202) 366–2053.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5310 and 5311—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Nonurbanized Area Formula Program (*OMB Number: 2132–0500*)

Background: The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas, urbanized, small urban, and rural. The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas and this program is also administered by the States. 49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements. Information collected during the project management stage includes an annual financial report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 102.44 hours for each of the respondents.

Estimated Total Annual Burden: 11,370 hours.

Frequency: Annual.

Issued: March 20, 2007.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E7–5416 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–27493; Notice No. 07–02]

Advisory Guidance; Transportation of Batteries and Battery-Powered Devices by Airline Passengers and Crew Members

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety advisory.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is issuing this advisory to inform the traveling public and airline employees about the importance of properly packing and handling batteries and battery-powered devices when they are carried aboard aircraft. Thousands of batteries and battery-powered devices are safely carried aboard passenger aircraft each day, but several recent incidents involving batteries in checked or carry-on baggage illustrate the risks of overheating and fire that can occur when the regulations are not followed. Federal regulations require that

electrical storage batteries or battery-powered devices carried aboard passenger aircraft be properly packaged or protected to avoid short-circuiting or overheating. In this safety advisory, we suggest various practical measures for complying with the regulations and minimizing transportation risks. Recommended practices include keeping batteries installed in electronic devices; packing spare batteries in carry-on baggage; keeping spare batteries in their original retail packaging; separating batteries from other metallic objects such as keys, coins and jewelry by packing individual batteries in a sturdy plastic bag; securely packing battery-powered equipment in a manner to prevent accidental activation; and ensuring batteries are undamaged and purchased from reputable sources.

FOR FURTHER INFORMATION CONTACT: Hazardous Materials Information Center, Office of Hazardous Materials Standards, PHMSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590–0001. Telephone: (800) 467–4922 or (202) 366–4488.

I. Introduction

Technological advances and the demands of a mobile society have made the use of portable electronic equipment and other battery-powered devices an established part of the modern American lifestyle. Americans increasingly own—and travel with—portable telephones, computers, cameras, camcorders, entertainment devices, and medical equipment—even cordless power tools. The batteries that power these devices are increasingly as varied as the products themselves: they are manufactured by many different companies, foreign and domestic, rely on a variety of power-generating technologies, established and newer; and come in all manner of shapes and sizes.

Portable battery-powered devices and batteries are safe for transportation when packed properly. But like many other materials that are part of daily consumer use, they must be handled and packaged appropriately to prevent unsafe conditions. A power tool that can be safely used for its intended purpose can cause damage if it is unintentionally activated inside a closed suitcase. Similarly, a battery can cause damage if it is improperly charged, abused, or short-circuited.

II. Safe Transportation of Electronic Devices and Spare Batteries

As the Federal regulatory agency with responsibility for the safe movement of hazardous materials by all modes of transportation, it is PHMSA's job to establish safety standards for the safe transportation of batteries and battery-powered devices. Our goal is to minimize risks to persons, property, and the environment, while keeping these materials moving in commerce. We apply the highest standards to transportation by air, recognizing that any fire aboard a passenger flight is unacceptable.

A. Passenger Regulations

PHMSA's regulations (Hazardous Materials Regulations (HMR; Title 49, Code of Federal Regulations, parts 171–180)) prohibit the transportation of electrical devices, unless the devices are packed in a manner to prevent sparks or overheating (see § 173.21(c)). Airline passengers who carry batteries or electrical devices in carry-on or checked baggage are responsible for ensuring appropriate steps are taken to protect against dangerous levels of heat that can be generated by inadvertent activation or short-circuiting of these devices while in transportation.

B. Recent Transportation Incidents

Over the past several years, we have received a number of reports of transportation incidents involving various kinds of batteries and battery-powered devices, including incidents involving passenger airline operations. The most recent incident occurred on February 10, 2007, aboard a flight originating at JFK International Airport. Shortly after takeoff, a fire ignited in a passenger bag stowed in an overhead bin. Fast and appropriate action by the crew brought the fire under control and prevented injury to passengers and crew. The flight crew promptly extinguished the fire and the flight returned to JFK for an emergency landing. Although the fire is still under investigation by PHMSA, the Federal Aviation Administration (FAA), and the National Transportation Safety Board (NTSB), preliminary reports indicate batteries were involved in the incident.

Other incidents have occurred on the ground. Last May, we received a report of a fire involving a spare lithium ion battery that had been stowed in a passenger's notebook computer carrying case. A flight attendant removed the burning case from the passenger cabin, and tossed it onto the ramp, where the fire was extinguished by ground personnel.

On April 18, 2004, at Chicago's Midway Airport, a power drill with an installed nickel cadmium battery activated while in checked luggage. This caused a fire that spread to other bags on a luggage cart waiting to be loaded onto a passenger aircraft.

In June 2003, we received reports that an overheated battery had been discovered in a routine baggage inspection of a flight departing from Logan Airport in Boston. The battery had been loosely packed in a toolbox, along with various metal tools. We believe the heat build-up was caused by short-circuiting when the battery's exposed terminals came in contact with metal objects in the toolbox.

C. Battery Operation and Risks

By design, all batteries operate through a controlled chemical reaction, which generates electrical energy and, in the process, some degree of heat. Batteries are designed to generate an electrical current and transmit power through terminals made of a conductive metal. It is their capacity to perform that basic function that makes them useful but, if not properly handled, designed or manufactured, poses a risk of overheating and fire.

External short-circuiting of a battery can occur from contact or close proximity of metal objects or other batteries near exposed terminals. The newest generation of batteries using lithium metal or lithium ion technology pose particular risks, based on their energy density and chemistry, and because fires involving these batteries are more difficult to extinguish or suppress. Even nickel cadmium and nickel metal-hydride batteries can generate large amounts of current and heat when short-circuited.

As with any product, manufacturing defects also can cause safety problems. Last summer, several major notebook computer manufacturers initiated recalls of their lithium ion batteries after learning of overheating and fires caused by a production defect in the batteries installed in the notebooks. According to the Consumer Product Safety Commission, manufacturers have voluntarily recalled over 10 million lithium-ion batteries in the last few years. We are also aware of risks associated with overcharging and internal short circuits that have led to battery recalls.

D. Measures for Safe Transportation of Batteries

We are aware that travelers want to take appropriate measures to ensure their safety and that of their fellow passengers and may need reminders or assistance to know how to travel safely with batteries. We recommend the following measures to ensure battery terminals are effectively insulated and

batteries and equipment are protected from damage and accidental initiation:

(1) *Keep batteries installed in portable electronic devices.* Passengers can safely carry electronic devices with installed batteries, such as, cellular phones, notebook computers, cameras, camcorders, entertainment devices, and medical equipment, in the passenger cabin of an airplane. When replacing with a spare battery during flight, handle batteries with care and pack spare batteries safely.

(2) *Pack spare batteries in carry-on baggage.* Conditions that could lead to an incident are easier to detect in the passenger compartment of an aircraft. Flight crews have access to fire extinguishers in the event of an in-flight incident involving batteries.

(3) *Keep spare batteries in the original retail packaging.* Batteries purchased from retail stores are packaged in plastic and cardboard packages intended for the transport of those batteries. This packaging prevents unintentional activation and short-circuiting by effectively isolating the batteries from contact with each other and other objects.

(4) *If original packaging is not available, effectively insulate battery terminals.* Effective insulation of battery terminals will ensure batteries do not short circuit from an external source. Travelers can effectively insulate battery terminals by isolating spare batteries from contact with other batteries and metal objects. If the original packaging is unavailable or damaged, place each battery individually in its own protective case, plastic bag or package. A sturdy, resealable plastic bag (*e.g.*, a freezer bag or sturdy resealable sandwich bag) is suitable for this purpose. Covering the battery terminals with insulating tape, such as electrical tape, is another effective method. We recommend using both measures in combination for batteries that have protruding or sharp terminals (*e.g.*, standard 9-volt batteries).

(5) *Do not carry recalled, damaged, or counterfeit batteries.*

Do not carry aboard a plane recalled, damaged or counterfeit batteries. Information about recalled batteries can be found at the manufacturer's Web site or from the Consumer Product Safety Commission (*http://www.cpsc.gov.*) Passengers should only use batteries purchased from reputable sources.

(6) *Prevent inadvertent activation of battery-powered devices.*

Leaving batteries in battery-powered devices is an effective means of insulating the terminals and protecting against internal short-circuiting. However, battery-powered devices with installed batteries must be packaged to prevent inadvertent activation. Cordless power tools, for instance, should be packed in a protective case, with a trigger lock engaged.

E. Next Steps

The publication of this safety advisory is one of several measures PHMSA is taking, in consultation with FAA, the NTSB, manufacturers of batteries and consumer products, airlines, testing laboratories, the emergency response and law enforcement community and other stakeholders, to respond to the battery-related incidents.

The Air Line Pilots Association, in conjunction with the International Federation of Air Line Pilots Associations, plans to simultaneously publish to their members a Safety Alert and Safety Bulletin respectively, concerning the hazards associated with in-flight passenger electronic equipment fires, and steps crewmembers should take in the event of a fire.

Over the next few months, PHMSA, FAA, and other interested public and private sector organizations will move ahead with actions to enhance battery transportation safety through development and revision of safety standards and public education and outreach.

In the meantime, airline passengers and crew members are reminded of their existing obligations under PHMSA's regulations. As noted above, airline passengers are prohibited from carrying batteries and battery-powered equipment aboard an aircraft unless the device and batteries have been packaged or protected against short-circuiting and overheating.

Issued in Washington, DC, on March 22, 2007.

Theodore L. Willke,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. E7–5562 Filed 3–23–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–254 (Sub-No. 9X)]

Providence and Worcester Railroad Company—Abandonment Exemption—Slatersville Secondary Track (Woonsocket, RI and Blackstone, MA)

Providence and Worcester Railroad Company (P&W) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of the Slatersville Secondary Track located in Woonsocket, Providence County, RI, extending from milepost 0.85 +/− at the north side of Boyden Street and continuing to a point that is 1,480 +/− feet northerly of the end of the track at milepost 0.0 in Blackstone, Worcester County, MA, a total distance of approximately 1.1 miles. The line traverses United States Postal Service Zip Codes 02895 and 01504.

P&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(l) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 25, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 5, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 16, 2007, with: Surface Transportation Board, 395

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee which is currently set at $1,300. *See* 49 CFR 1002.2(f)(25).

E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to P&W's representative: Edward D. Greenberg, 1054 Thirty-First Street, NW., Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

P&W has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 30, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), P&W shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by P&W's filing of a notice of consummation by March 26, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 16, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–5339 Filed 3–23–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before April 25, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0768.

Type of Review: Extension.

Title: EE–178–78 Final (TD 7898) Employers Qualified Educational Assistance Programs.

Description: Respondents include employers who maintain education assistance programs for their employees. Information verifies that programs are qualified and that employees may exclude educational assistance from their gross incomes.

Respondents: Businesses and other for-profit insitutions.

Estimated Total Burden Hours: 615 hours.

OMB Number: 1545–2033.

Type of Review: Extension.

Title: Notice 2006–83, Chapter 11 Bankruptcy Cases.

Description: The IRS needs bankruptcy estates and individual chapter 11 debtors to allocate post-petition income and tax withholding between the estate and the debtor. The IRS will use the information in administering the internal revenue laws. Respondents will be individual debtors and their bankruptcy estates for chapter 11 cases filed after October 16, 2005.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,500 hours.

OMB Number: 1545–0949.

Type of Review: Revision.

Title: Application for Special Enrollment Examination.

Form: 2587.

Description: This information relates to the determination of the eligibility of individuals seeking enrollment status to practice before the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Total Burden Hours: 11,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–5462 Filed 3–23–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
March 26, 2007

Part II

Environmental Protection Agency

40 CFR Parts 260 and 261
Revisions to the Definition of Solid Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–RCRA–2002–0031–FRL–8289–9]

RIN 2050–AG31

Revisions to the Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Supplemental Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a supplemental proposal which would revise the definition of solid waste to exclude certain hazardous secondary materials from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). We are also soliciting comments on regulatory factors to be used to determine whether recycling of hazardous secondary materials is legitimate. The Agency first proposed changes to the definition of solid waste on October 28, 2003 (68 FR 61558). The purpose of this proposal is to encourage safe, environmentally sound recycling and resource conservation and to respond to several court decisions concerning the definition of solid waste.

DATES: Comments must be received on or before May 25, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before April 25, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ –RCRA 2002–0031 by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2002–0031.

Fax: Fax comments to: 202–566–0270, Attention Docket ID No. EPA–HQ–RCRA 2002–0031.

Mail: Send comments to: OSWER Docket, EPA Docket Center, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2002–0031. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., Washington, DC 20503.

Hand delivery: Deliver comments to: Environmental Protection Agency, EPA Docket Center, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–RCRA–2002–0031. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–RCRA–2002–0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OSWER Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is 202–566–0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Marilyn Goode, Office of Solid Waste, Hazardous Waste Identification Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (703) 308–8800, (*goode.marilyn@epa.gov*) or Tracy Atagi, Office of Solid Waste, Hazardous Waste Identification Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8672 (*atagi.tracy@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially affected by this action include about 4600 facilities in 530 industries in 17 economic sectors that generate or recycle hazardous secondary materials which are currently regulated as RCRA Subtitle C hazardous wastes (e.g., industrial co-products, by-products, residues, unreacted feedstocks). About 80 percent of these affected facilities are classified in NAICS code economic sectors 31, 32, and 33 (manufacturing), and the remainder are in NAICS code economic sectors 21 (mining), 22 (utilities), 23 (construction), 42 (wholesale trade), 44 and 45 (retail trade), 48 and 49 (transportation), 51 (information), 54 (professional, scientific and technical services), 56 (administrative support, waste management and remediation), 61 (educational services), 62 (health care and social assistance, and 81 (other services). About 0.65 million tons per year of recyclable industrial materials handled by these entities may be affected, of which the most common types are metal-bearing hazardous secondary materials (e.g., sludges and spent catalysts) for commodity metals recovery, and organic chemical liquids for recycling as solvents. This proposed rule, if promulgated, is expected to result in regulatory and materials recovery cost savings to these industries of approximately $107 million per year. Taking into account impact estimation uncertainty factors, this rule, if promulgated, could affect between 0.3 to 1.7 million tons per year of industrial hazardous secondary materials handled by 3600 to 5400 entities in 460 to 570 industries, resulting in $93 million to $205 million per year of net cost savings. More detailed information on the potentially affected entities, industries, and industrial materials, as well as the economic impacts of this

rule (with impact uncertainty factors), is presented in section XVI.A of this preamble and in the ''Economics Background Document'' available in the docket for this rulemaking.

B. What To Consider When Preparing Comments for EPA

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask for commenters 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 estimating burden or costs, explain methods used to arrive at the estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate any concerns and suggest alternatives.
- Make sure to submit comments by the comment period deadline identified above.

Preamble Outline

I. Statutory Authority.
II. What Is the Scope of This Supplemental Proposal?
III. What Is the Intent of This Supplemental Proposal?
IV. How Does This Supplemental Proposal Relate to the October 2003 Proposal?
V. How Is Hazardous Waste Recycling Currently Regulated?
VI. What Is the History of Recent Court Decisions on the Definition of Solid Waste?
VII. How Does the Concept of Discard Relate to These Proposed Exclusions?
VIII. Recycling Studies.
IX. Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator: Proposed 40 CFR 260.10, 261.2(a)(1), 261.2(a)(2), 261.2(c)(3), 261.4(a)(23).
X. Conditional Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation: Proposed 40 CFR 261.2(c)(3), 261.4(a)(24), 261.4(a)(25).
XI. Legitimacy: Proposed 40 CFR 261.2(g).
XII. Petitions for Non-waste Classification: Proposed 40 CFR 260.30(d), 260.30(e), 260.30(f), 260.34.
XIII. Effect of This Proposal on Other Programs.
XIV. Measurement of the Performance Outcomes of This Supplemental Proposal.
XV. How Would These Proposed Regulatory Changes Be Administered and Enforced in the States?
XVI. How Has EPA Fulfilled the Administrative Requirements for This Rulemaking?

I. Statutory Authority

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, 3010, and 3017 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924.

II. What Is the Scope of This Supplemental Proposal?

In today's notice, EPA is proposing to revise the definition of solid waste in order to exclude from regulation under Subtitle C of RCRA certain hazardous secondary materials sent for recycling. We are also seeking comment on certain changes to the proposed regulatory factors for determining whether recycling is legitimate. The Agency first proposed changes to the definition of solid waste, as well as regulatory criteria for legitimacy, on October 28, 2003 (68 FR 61581–61588).

The scope of the regulatory changes proposed today are as follows:

A. Exclusion for Materials That Are Legitimately Reclaimed Under the Control of the Generator in Non-Land-Based Units

This provision, with regulatory language proposed in 40 CFR 261.2(a)(2)(ii), would exclude certain hazardous secondary materials (i.e., spent materials, listed sludges, and listed byproducts) that are generated and legitimately reclaimed[1] within the United States or its territories[2] and are only handled in non-land-based units (e.g., tanks, containers, containment buildings). The exclusion would apply to hazardous secondary material that is reclaimed under the control of the generator, if the materials are not speculatively accumulated. In addition, EPA is proposing to include in 40 CFR 260.42 a requirement that the generator would be required to submit a one-time notification to EPA or the authorized state. Hazardous secondary material would be considered ''under the control of the generator'' under the following circumstances:

(1) It is generated and then reclaimed at the generating facility; or

(2) It is generated and reclaimed by the same company, if the generator certifies that it is under the same ownership as the reclaimer and that the owner company has acknowledged responsibility for safe management of the hazardous secondary materials; or

(3) It is generated and reclaimed pursuant to a written agreement between a tolling contractor and batch manufacturer, if the tolling contractor retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture.

This proposed exclusion would not include recycling practices that involve discard of materials. These practices include recycling of inherently waste-like materials (40 CFR 261.2(d)), recycling of materials that are used in a manner constituting disposal or used to produce products that are applied to or placed on the land (40 CFR 261.2(c)(1)), and burning of materials for energy recovery or used to produce a fuel or otherwise contained in fuels (40 CFR 261.2(c)(2)). This proposed exclusion is further described in section IX of this

[1] In this context, the terms ''recycling'' and ''reclamation'' are not necessarily synonymous. ''Recycling typically involves a series of activities, including storage and other handling steps that culminate in the production of a valuable end product of some kind. Thus, if materials need to be reclaimed in order to produce a valuable end product, the reclamation activity can be thought of as one step in the overall recycling process. See proposed § 261.4(g). Further explanation of the term ''reclamation'' can be found in the preamble to the October 2003 proposal at 68 FR 61564.

[2] EPA has proposed to limit this exclusion to hazardous secondary materials reclaimed within the United States or its territories because it does not have sufficient information related to recycling activities outside of the United States or its territories to make the same general finding that it has made for materials legitimately recycled under the control of the generator. However, as noted below, EPA requests comment on whether the Agency should promulgate a conditional exclusion for exported hazardous secondary material otherwise meeting the criteria for this rule.

preamble. We note that the Agency is considering expanding its regulations for comparable fuels in a separate rulemaking.

B. Exclusion for Materials That Are Legitimately Reclaimed Under the Control of the Generator in Land-Based Units

This provision, with regulatory language proposed in 40 CFR 261.4(a)(23), would exclude certain hazardous secondary materials that are generated and legitimately reclaimed within the United States or its territories and handled in land-based units (*e.g.*, surface impoundments, waste piles). This provision requires that hazardous secondary materials managed in land-based units must be contained in such units.

C. Conditional Exclusion for Materials That Are Transferred for the Purpose of Reclamation

This conditional exclusion, with regulatory language proposed in 40 CFR 261.4(a)(24), (hereinafter referred to as the ''transfer-based exclusion'') would apply to hazardous secondary materials (i.e., spent materials, listed sludges, and listed byproducts) that are generated and subsequently transferred to a different person or company for the purpose of reclamation. As long as the conditions to the exclusion are satisfied, the hazardous secondary materials would not be subject to Subtitle C regulation. The conditions are intended to ensure that such materials are handled as commodities rather than wastes. They will also help guarantee that protection of human health and the environment will not be compromised in the absence of hazardous waste regulatory requirements for these materials. It is important to note that when hazardous secondary materials are generated and reclaimed within the United States pursuant to a written agreement between a tolling contractor and a batch manufacturer as defined in proposed 40 CFR 260.10, these materials would be subject to the requirements of proposed 40 CFR 261.2(a)(ii) or 261.4(a)(23) rather than the more extensive requirements of proposed 40 CFR 261.4(a)(24).

If any of the hazardous secondary materials under proposed 40 CFR 261.4(a)(24) are generated and then exported to another country for reclamation, we are also proposing that the exporter notify the receiving country of the export through EPA and obtain consent from that country before shipment of the material. This requirement is proposed to be codified in 40 CFR 261.4(a)(25). Like the previously discussed exclusion for hazardous secondary materials recycled under the control of the generator, this exclusion would not cover recycling of inherently waste-like materials, recycling of materials that are used in a manner constituting disposal, and burning of materials for energy recovery. The proposed exclusion is described in more detail in section X of this preamble.

D. Petition Process for Non-Waste Determinations

In addition to the exclusions discussed above, the Agency also is proposing a petition process, with regulatory language found in proposed 40 CFR 260.30(d), 260.30(e), 260.30(f), and 260.34, for obtaining a case-specific non-waste determination for certain hazardous secondary materials that are recycled. This process would allow a petitioner to receive a formal determination from the Agency that its hazardous secondary material is clearly not ''discarded'' and therefore is not a solid waste. The procedure would allow EPA or the authorized state to take into account the particular fact pattern of the recycling and to determine that the hazardous secondary material in question is not a solid waste without imposing additional requirements. The determination would be available to petitioners who could demonstrate that their hazardous secondary materials were recycled in a continuous industrial process, or that the materials were indistinguishable in all relevant aspects from a product or intermediate, or that the materials were under the control of the generator via a tolling arrangement or similar contractual arrangement. The petition process for the non-waste determinations would be the same as that for the variances from the definition of solid waste found in 40 CFR 261.31. This process and the criteria for making these determinations, are described in section XII of this preamble.

E. Legitimacy

On October 28, 2003 (68 FR 61581–61588), EPA extensively discussed our position on the relevance of legitimacy to hazardous waste recycling in general and to the redefinition of solid waste specifically. We proposed to codify in the RCRA regulations four general criteria to be used in determining whether recycling of hazardous secondary materials is legitimate. In today's action, we are proposing changes to the proposed legitimacy criteria and asking for public comment on these revisions. The changes consist of a restructuring of the proposed criteria, called factors in this proposal, by making two of these factors mandatory and two non-mandatory considerations, and providing further guidance and clarification on how the economics of recycling should be considered in making legitimacy determinations. The changes are described in section XI of this preamble.

III. What Is the Intent of This Supplemental Proposal?

Today's supplemental proposal would revise and clarify the RCRA definition of solid waste as it pertains to certain types of hazardous secondary materials that would not be considered wastes subject to regulation under RCRA Subtitle C. This notice builds on our October 28, 2003 proposal (68 FR 61558) which was initiated partially in response to decisions by the United States Court of Appeals for the DC Circuit, which, taken together, have provided the Agency with additional direction in this area.

This proposal represents an important restructuring of the RCRA regulations that distinguish wastes from non-waste materials for RCRA purposes, and that ensure environmental protections over hazardous secondary materials recycling practices. As such, it also is an opportunity for the Agency to clarify in a regulatory context the concept of ''legitimate recycling,'' which has been and is a key component of RCRA's regulatory program for recycling, but which to date has been implemented without regulatory criteria. Today's supplemental proposal thus includes specific regulatory provisions for determining when hazardous secondary materials are recycled legitimately.

Today's supplemental proposal is de-regulatory in nature because certain recyclable materials that have heretofore been subject to the hazardous waste regulations would no longer be regulated as hazardous waste. The factors to consider for legitimate recycling codify existing principles without increasing regulation. This proposal is not intended to bring new wastes into the RCRA regulatory system.

By removing unnecessary hazardous waste regulatory controls over certain recycling practices, and by providing more explicit criteria for determining the legitimacy of recycling practices in general, EPA expects that this proposal will encourage the safe, beneficial recycling of hazardous secondary materials. This regulatory initiative is thus consistent with the Agency's longstanding policy of encouraging the recovery and reuse of valuable resources as an alternative to land disposal, while at the same time maintaining protection of human health and the environment.

It also is consistent with one of the primary goals of the Congress in enacting the RCRA statute (as evidenced by its name), and with the Agency's vision of how the RCRA program could evolve over the longer term to promote sustainability and more efficient use of resources.[3]

IV. How Does This Supplemental Proposal Relate to the October 2003 Proposal?

On October 28, 2003 (68 FR 61558), the Agency proposed to exclude from the definition of solid waste any material generated and reclaimed in a continuous process within the same industry, provided the reclamation was legitimate. ''Same industry'' was defined as industries sharing the same 4-digit North American Industry Classification System (NAICS) code. The basis for that exclusion was the holding in *American Mining Congress* v. *EPA* (''AMC I''), 824 F.2d 1177 (DC Cir. 1987)) that materials destined for beneficial reuse of recycling in a continuous process by the generating industry are not discarded. In order to be eligible for the exclusion, the hazardous secondary material could not be speculatively accumulated under 261.1(c)(8). In addition, the generator of such materials would be required to submit a one-time notification to EPA or the authorized State with contact information, the type of material that would be excluded, and the industry that generated the material. In the October 2003 proposal, the Agency also proposed to codify in the RCRA regulations four criteria to be used in determining whether recycling of hazardous secondary material was legitimate. We also solicited comment on a broader conditional exclusion from RCRA regulation for essentially all hazardous secondary materials that are legitimately recycled. For a discussion of public comments received on our proposed exclusion, see section IX of this preamble.

After evaluating comments received on the October 2003 proposal and conducting an independent analysis, EPA decided to restructure its approach. Following the decision of the DC Circuit Court in *Association of Battery Recyclers* v. *EPA* (''ABR'')(208 F.3d 1047 (DC Cir. 2000), EPA has decided to examine the principles behind the court's holdings on the definition of solid waste, rather than trying to fit materials into specific fact patterns addressed by the court. EPA is therefore proposing (1) an exclusion for hazardous secondary materials that are generated and then reclaimed under the control of the generator; (2) a conditional exclusion for hazardous secondary materials that are generated and then transferred to another person for the purpose of reclamation; and (3) a petition process for obtaining a case-specific non-waste determination for certain hazardous secondary materials that are recycled. Today's notice also proposes a restructuring of the previously proposed legitimacy criteria and further clarification and guidance on how the economics of the recycling transaction should be considered in making legitimacy determinations. A detailed description of today's proposed regulatory changes and the reasons for not finalizing the October 2003 proposal are discussed in sections IX, X, XI, and XII of this preamble.

V. How Is Hazardous Waste Recycling Currently Regulated?

The basic regulatory provisions for defining ''solid wastes'' and ''hazardous wastes'' under RCRA are found in part 261 of Title 40 of the Code of Federal Regulations (CFR). To be subject to RCRA's hazardous waste regulatory program, a material must be a solid waste that is also a hazardous waste. A solid waste is a hazardous waste if it is explicitly listed as such (in subpart D of part 261), or if it exhibits one or more of the hazardous characteristics (as specified in subpart C of part 261).

In general, hazardous wastes are subject to RCRA's full ''cradle to grave'' regulatory system from the time they are generated to the time that they are ultimately disposed. However, hazardous secondary materials often can be recycled instead of being disposed, which can change how those wastes are regulated. The ''definition of solid waste'' regulations in part 261 in effect separate recyclable hazardous secondary materials into two broad categories—those that are classified as solid wastes when recycled, and are therefore subject to regulation under Subtitle C of RCRA if they are listed or characteristic hazardous wastes, and those that are not considered solid wastes when they are recycled, and thus are not regulated. It should be understood that the term ''hazardous secondary material'' as it is used in today's rule and preamble therefore refers to both categories of recyclable materials; that is, materials that are regulated as hazardous wastes when recycled, and materials that are not considered wastes when recycled.

Hazardous secondary materials that are currently not regulated as wastes when they are recycled include, for example, those which are used or reused directly as effective substitutes for commercial products, and those which can be used as ingredients in an industrial process, provided the materials are not being reclaimed. See 40 CFR 261.2(e). In essence, EPA considers these types of recycling practices to be more akin to normal industrial production rather than waste management.

In contrast, in some recycling practices, the hazardous secondary material cannot be used as is and must be significantly processed before it can be reused in a manner similar to products in commerce. In these cases, EPA has found that the material may be more ''waste-like'' and the hazardous secondary materials therefore have been regulated as hazardous wastes. One type of recycling that falls within this category and that is especially relevant to this rule is reclamation of certain types of hazardous secondary materials. Reclamation involves the processing of hazardous secondary materials in some way in order so that they can be used or reused. See 40 CFR 261.1(c)(4) and 40 CFR 261.2(c)(3). An example of reclamation is processing of a spent solvent to restore its solvent properties before it is suitable for reuse as a solvent. As explained elsewhere in today's preamble, this supplemental proposal would reexamine the regulatory status of these hazardous secondary materials and de-regulate a specific subset of these materials that are recycled by being reclaimed.

In the existing Part 261 regulations, EPA identified other types of recycling practices that are fully regulated because, we concluded, they involve discard of materials. These practices include recycling of ''inherently waste-like'' materials (40 CFR 261.2(d)), recycling of materials that are ''used in a manner constituting disposal,'' or ''used to produce products that are applied to or placed on the land,''(40 CFR 261.2(c)(1)) and ''burning of materials for energy recovery'' or ''used to produce a fuel or otherwise contained in fuels'' (40 CFR 261.2(c)(2)). Today's supplemental proposal is not intended to affect how these recycling practices are regulated.

The current regulations also provide certain specific exemptions and exclusions from the definition of solid waste for particular recycling practices. For example, pulping liquors from paper manufacturing that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process are

[3] The Agency's long-term ''vision'' of the future of the RCRA program is discussed in the document ''Beyond RCRA: Prospects for Waste and Materials Management in the Year 2020,'' which is available on the Agency's Web site *http://www.epa.gov/epaoswer/osw/vision.htm.*

excluded from regulation under 40 CFR 261.4(a)(6). In some cases, these exclusions specify certain conditions that must be met in order to qualify for and maintain the excluded status of the recycled material. An example of such a ''conditional exclusion'' is the one provided in 40 CFR 261.4(a)(9) for spent wood preserving solutions that are reclaimed and reused. EPA is proposing that hazardous secondary materials that are currently excluded with specific requirements or conditions should be required to continue to meet those requirements (*e.g.*, the drip pad requirements for the wood preserving exclusion). In addition, recycling of such materials at new facilities, or at existing facilities that are not currently operating under the terms of an existing exclusion, would also be subject to the existing applicable regulatory exclusion, rather than today's proposed exclusions. For a fuller discussion of this issue, see section XIII of this preamble. In that section, we solicit comment on allowing regulated entities to choose which exclusion they would be subject to in cases where more than one exclusion could apply.

VI. What Is the History of Recent Court Decisions on the Definition of Solid Waste?

A. Background

RCRA gives EPA the authority to regulate the disposal of ''solid wastes'' under its non-hazardous waste program. See, *e.g.*, RCRA sections 1008(a), 4001 and 4004(a). RCRA also gives EPA authority to regulate hazardous wastes. See, *e.g.*, RCRA sections 3001–3004. ''Hazardous wastes'' are the subset of solid wastes that present threats to human health and the environment. See section 1004(5). EPA also may address solid and hazardous wastes under its endangerment authorities in section 7003. (Similar authorities are available for citizen suits under section 7002.) Materials that are not solid wastes are generally not subject to regulation under RCRA Subtitle C. Thus, the definition of ''solid waste'' plays a key role in defining the scope of EPA's authorities under RCRA.

The statute defines ''solid waste'' as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* * * * resulting from industrial, commercial, mining, and agricultural operations, and from community activities * * *'' (RCRA Section 1004 (27) (emphasis added)). In its RCRA hazardous waste regulations, EPA has historically defined certain hazardous secondary materials destined for recycling as ''waste,'' while excluding others.

Since 1980, EPA has interpreted ''solid waste'' under its Subtitle C regulations to encompass both materials that are destined for final, permanent placement in disposal units, as well as some materials that are destined for recycling. 45 FR 33090–95 (May 19, 1980); 50 FR 604–656 (Jan. 4, 1985) (see especially pages 616–618). EPA has offered three arguments in support of this approach:

- The statute and the legislative history suggest that Congress expected EPA to regulate as solid and hazardous wastes certain materials that are destined for recycling (see 45 FR 33091, citing numerous sections of the statute and *U.S. Brewers' Association* v. *EPA,* 600 F.2d 974 (DC Cir. 1979); 48 FR 14502–04 (April 3, 1983); and 50 FR 616–618).
- Hazardous secondary materials stored or transported prior to recycling have the potential to present the same types of threats to human health and the environment as hazardous wastes stored or transported prior to disposal. In fact, EPA found that recycling operations have accounted for a number of significant damage incidents. For example, materials destined for recycling were involved in one-third of the first 60 filings under RCRA's imminent and substantial endangerment authority, and 20 of the initial sites listed under CERCLA. (48 FR 14474, April 4, 1983.) Congress also cited some damage cases which can be interpreted to involve recycling. (H.R. Rep. 94–1491, 94th Cong., 2d Sess., at 17, 18, 22). More recent data (i.e., information on damages occurring after 1982) included in the rulemaking docket for today's supplemental proposal corroborate the fact that recycling operations can result in significant damage incidents. (See section IV.B.2 of today's preamble.)
- Excluding all hazardous secondary materials destined for recycling would allow materials to move in and out of the hazardous waste management system depending on what any person handling the material intended to do with it. This seems inconsistent with the mandate to track hazardous wastes and control them from ''cradle to grave.''

EPA has interpreted the statute to confer jurisdiction over at least certain hazardous secondary materials destined for recycling. The Agency has therefore developed in Part 261 of 40 CFR a definition of ''solid waste'' for Subtitle C regulatory purposes. (**Note:** This definition is narrower than the definition of ''solid waste'' for RCRA endangerment and information-gathering authorities. See 40 CFR 261.1(b) and *Connecticut Coastal Fishermen's Association* v. *Remington Arms Co.,* 989 F.2d 1305, 1315 (2d Cir. 1993), holding that EPA's use of a narrower and more specific definition of solid waste for Subtitle C purposes is a reasonable interpretation of the statute. See also *Military Toxics Project* v. *EPA,* 146 F.3d 948 (DC Cir. 1998).)

Under its current Subtitle C regulations, EPA classifies as solid wastes some—but not all—hazardous secondary materials that are recycled by ''reclamation.'' The regulations define ''spent materials'' as being ''discarded'' if they are destined for reclamation. However, ''commercial chemical products'' are not defined as ''discarded'' when reclaimed. In addition, byproducts and sludges are defined as ''discarded'' when reclaimed on a case-by-case basis. That is, EPA considers these materials to be ''discarded'' when they are specifically listed as a hazardous waste at 40 CFR 261 Subpart D. See Table 1 to 40 CFR 261.2. EPA has also promulgated three exceptions from the Subtitle C definition for materials destined for reclamation. See 260.31(b) and (c); 40 CFR 261.4(a)(8).

Finally, EPA has always asserted that materials are not excluded from its jurisdiction simply because someone claims that they will be recycled. EPA has consistently considered hazardous secondary materials destined for ''sham recycling'' to be discarded and, hence, to be solid wastes for Subtitle C purposes. See 45 FR 33093 (May 19, 1980), 50 FR 638–39 (Jan. 4, 1985). The U.S. Court of Appeals for the DC Circuit has agreed that materials undergoing sham recycling are discarded and, consequently, are solid wastes under RCRA. See *American Petroleum Institute* v. *EPA,* 216 F.3d 50, 58–59 (DC Cir. 2000).

B. A Series of DC Circuit Court Decisions

Trade associations representing mining and oil refining interests challenged EPA's 1985 regulatory definition of solid waste. In 1987, the DC Circuit held that EPA exceeded its authority ''in seeking to bring materials that are not discarded or otherwise disposed of within the compass of 'waste.' '' *American Mining Congress* v. *EPA* (''*AMC I*''), 824 F.2d 1177, 1178 (DC Cir. 1987). Although the Court clearly articulated this concept, it did not specify which portions of the rules exceeded EPA's authority. It more

generally ''granted the petition for review.''

The Court held that certain of the materials EPA was seeking to regulate were not ''discarded materials'' under section 1004(27). After reviewing numerous statutory provisions and portions of the legislative history, the Court held that Congress used the term ''discarded'' in its ordinary sense, to mean ''disposed of'' or ''abandoned 824 F.2d at 1188–89. The Court further held that the term ''discarded materials'' could not include materials * * * destined for beneficial reuse or recycling in a continuous process by the generating industry itself (because they) are not yet part of the waste disposal problem. 824 F.2d at 1190. The Court held that Congress had directly spoken to this issue, so that EPA's use of a conflicting definition was not entitled to deference under *Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837 (1984). 824 F.2d at 1183, 1189–90, 1193.

At the same time, the Court did *not* hold that no recycled materials could be discarded. The Court mentioned at least two examples of recycled materials that EPA properly considered within its statutory jurisdiction, noting that used oil can be considered a solid waste. 824 F.3d at 1187 (fn 14). Also, the Court suggested that materials disposed of and recycled as part of a waste management program are within EPA's jurisdiction. 824 F.2d at 1179. Subsequent decisions by the DC Circuit also indicate that some materials destined for recycling are ''discarded'' and therefore within EPA's jurisdiction. In particular, the Court held that emission control dust from steelmaking operations listed as hazardous waste ''K061'' is a solid waste, even when sent to a metals reclamation facility, at least where that is the treatment method required under EPA's land disposal restrictions program. *American Petroleum Institute* v. *EPA* (''*API I*''), 906 F.2d 729 (DC Cir. 1990). The Court held that it is reasonable for EPA to consider as discarded (and solid wastes) listed wastes managed in units that are part of wastewater treatment units, especially where it is not clear that the industry actually reuses the materials. (''*AMC II*''), 907 F.2d 1179 (DC Cir. 1990). Also, the Court found that EPA potentially had jurisdiction over oil-bearing wastewaters recycled at petroleum refineries, although in the rule under review EPA failed to provide a rational basis for asserting jurisdiction. *American Petroleum Institute* v. *EPA* (''*API II*''), 216 F.3d 50, 57–58 (DC Cir. 2000).

It also is worth noting that two other Circuits also have held that EPA has authority over at least some materials destined for reclamation rather than final discard. The U.S. Court of Appeals for the 11th Circuit found that ''[i]t is unnecessary to read into the term 'discarded' a congressional intent that the waste in question must finally and forever be discarded.'' *U.S.* v. *ILCO,* 996 F.2d 1126, 1132 (11th Cir. 1993) (finding that used lead batteries sent to a reclaimer have been ''discarded once'' by the entity that sent the battery to the reclaimer). The Fourth Circuit found that slag held on the ground untouched for six months before sale for use as road bed could be a solid waste. *Owen Electric Steel Co.* v. *EPA,* 37 F.3d 146, 150 (4th Cir. 1994).

Considering all of these decisions (except the *API* case decided in 2000), in 1998, EPA promulgated a rule in which EPA claimed Subtitle C jurisdiction over hazardous secondary materials recycled by reclamation within the mineral processing industry (the ''LDR Phase IV rule'') (63 FR 28556 (May 26, 1998)). In that rule, EPA promulgated a conditional exclusion for all types of mineral processing hazardous secondary materials destined for reclamation. EPA imposed a condition prohibiting land-based storage prior to reclamation because it considered hazardous secondary materials from the mineral processing industry that were stored on the land to be part of the waste disposal problem (63 FR at 28581). The conditional exclusion decreased regulation over spent materials stored prior to reclamation, but increased regulation over by-products and sludges that exhibit a hazardous characteristic, and that are stored prior to reclamation. EPA noted that the statute does not authorize it to regulate ''materials that are destined for immediate reuse in another phase of the industry's ongoing production process.'' EPA, however, took the position that materials that are removed from a production process for storage are not ''immediately reused,'' and therefore are ''discarded'' (63 FR at 28580).

The mining industry challenged the rule, and the DC Circuit vacated the provisions that expanded jurisdiction over characteristic by-products and sludges destined for reclamation. *Association of Battery Recyclers* v. *EPA* (''*ABR*''), 208 F.3d 1047 (DC Cir. 2000). The Court held that it had already resolved the issue presented here in its opinion in *AMC I,* where it found that ''* * * Congress unambiguously expressed its intent that 'solid waste' (and therefore EPA's regulatory authority) be limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away.'' 208 F.2d at 1051. It repeated that materials reused within an ongoing industrial process are neither disposed of nor abandoned. 208 F.3d at 1051–52. It explained that the intervening API I and AMC II decisions had not narrowed the holding in AMC I. 208 F.3d at 1054–1056.

At the same time, the Court did not hold that storage before reclamation automatically makes materials ''discarded.'' Rather, it held that ''* * * at least some of the secondary material EPA seeks to regulate as solid waste (in the mineral processing rule) is destined for reuse as part of a continuous industrial process and thus is not abandoned or thrown away.'' 208 F.3d at 1056.

In its most recent opinion dealing with the definition of solid waste, *Safe Food and Fertilizer* v. *EPA,* 350 F.3d 1263 (DC Cir. 2003), the Court upheld an EPA rule that excludes from the definition of solid waste hazardous secondary materials used to make zinc fertilizers, and the fertilizers themselves, so long as the recycled materials meet certain handling, storage and reporting conditions and the resulting fertilizers have concentration levels for lead, arsenic, mercury, cadmium, chromium, and dioxins that fall below specified thresholds. Final Rule, ''Zinc Fertilizers Made From Recycled Hazardous Secondary Materials'' (''Fertilizer Rule''), (67 FR 48393 (2002)). EPA determined that if these conditions are met, the recycled materials have not been discarded. The conditions apply to a number of recycled materials not produced in the fertilizer production industry, including certain zinc-bearing hazardous secondary materials such as brass foundry dusts.

EPA's reasoning was that market participants, consistent with the EPA-required conditions in the rule, would treat the exempted materials more like valuable products than like negatively-valued wastes and, thus, would manage them in ways inconsistent with discard. In addition, the fertilizers derived from these recycled feedstocks are chemically indistinguishable from analogous commercial products made from raw materials. 350 F.3d at 1269. The court upheld the rule based on EPA's explanation that market participants manage materials in ways inconsistent with discard, and the fact that the levels of contaminants in the recycled fertilizers were ''identical'' to the fertilizers made with raw materials. The court held that this interpretation of ''discard'' was reasonable and consistent with the statutory purpose. The court

noted that the identity principle was defensible because the differences in health and environmental risks between the two types of fertilizers are so slight as to be substantively meaningless.

However, the Court specifically stated that it ''need not consider whether a material could be classified as a non-discarded exclusively on the basis of the market-participation theory.'' 350 F.3d at 1269. The court only determined that the combination of market participants' treatment of the materials, EPA required management standards and the ''identity principle'' are a reasonable set of tools to establish that the recycled secondary materials and fertilizers are not discarded.

C. 2003 Proposed Revisions to the Definition of Solid Waste

As a result of the court decision in ABR to vacate the provisions in the May 1998 final rule that increased regulation of characteristic by-products and sludges from mineral processing, EPA promulgated a final rule removing from the Code of Federal Regulations the byproduct and sludge provisions (67 FR 11251 (Mar. 13, 2002)). Later, prompted by concerns articulated in the various Court opinions up to the ABR decision, EPA issued the October 2003 notice, which proposed that material generated and reclaimed in a continuous process within the same industry is not discarded for purposes of Subtitle C, provided that the recycling process is legitimate. However, for the reasons described elsewhere in today's notice, we are proposing different types of exclusions from the definition of solid waste in this supplemental proposal that we believe more directly consider whether particular materials are not considered ''discarded'', and are not solid and hazardous wastes subject to regulation under Subtitle C of RCRA. The October 2003 proposal and how it relates to today's supplemental proposal is further discussed elsewhere in today's preamble.

VII. How Does the Concept of Discard Relate to These Proposed Exclusions?

The concept of ''discard'' is the central organizing idea behind today's supplemental proposal, which reflects the fundamental logic of the RCRA statute. As stated in RCRA Section 1004(27), ''solid waste'' is defined as ''* * * any garbage, refuse, sludge from a waste treatment plant, or air pollution control facility and other discarded material * * * resulting from industrial, commercial, mining and agricultural activities* * *'' Therefore, in the context of this supplemental proposal, a key issue is the circumstances under which a material that is recycled by reclamation is or is not discarded.

In the series of decisions discussed above relating to the RCRA definition of solid waste, the Court of Appeals for the DC Circuit has consistently cited a plain language definition of discard, as meaning ''disposing, abandoning or throwing away.'' EPA believes that this is a workable and logical definition of the term, and the underlying logic of today's proposed exclusions is consistent with this definition.

The basic rationale that EPA is applying in this case differentiates between recycled hazardous secondary materials over which the generator maintains control and recycled hazardous secondary materials over which the generator relinquishes control. If the generator maintains control over the recycled hazardous secondary material and it is legitimately recycled under the standards established in this proposal and the material is not speculatively accumulated within the meaning of EPA's regulations, the hazardous secondary material is not discarded. This is because the material is being treated as a valuable commodity rather than as a waste. By maintaining control over, and potential liability for, the recycling process, the generator ensures that the materials are not discarded. See *ABR* 208 F.3d at 1051 (''Rather than throwing these materials [destined for recycling] away, the producers saves them; rather than abandoning them, the producer reuses them.''). However, when the hazardous secondary materials are managed in land-based units (e.g., waste piles, surface impoundments, etc), the hazardous secondary materials must be contained, or they may be considered discarded, even if they remain under the control of the generator. While placement on the land would not in itself constitute discard, when hazardous secondary materials are not being managed as a valuable product and, as a result, a significant release occurs, such materials would be considered discarded. Further discussion of these concepts appears in section IX of this preamble.

In those cases, however, where generators of hazardous secondary materials do not re-use or recycle the materials themselves, it often may be a sound business decision to ship the material to be recycled to a commercial facility or another manufacturer in order to avoid the costs of disposing of the material. In such situations, the generator has relinquished control of the hazardous secondary material and the entity receiving such materials may not have the same incentives to manage the hazardous secondary material as a useful product. Accordingly, the Agency believes that conditions are needed for the Agency to determine that this material is not discarded. However, if the recycler legitimately recycles the hazardous secondary material, it is not regulated as a solid waste, provided certain additional conditions are met. Further discussion of the Agency's rationale for this concept appears in section X.A. of this preamble.

This is the general logic we have used in developing the exclusions in today's supplemental proposal. The proposed exclusion for hazardous secondary materials that are recycled under the control of the generator is based on the notion that as long as the generator has control over the recycling process, has chosen to legitimately reclaim it within the United States or its territories, retains liability in the event that the hazardous secondary materials (be they the materials that were generated, residuals from a reclamation process, or both) are somehow released into the environment, these materials are not discarded. In addition, if the materials are managed in a land-based unit, the generator must ensure that the materials are contained. Of course, if such hazardous secondary materials are released into the environment and are not recovered in a timely manner, these materials have been discarded and the generator is subject to all applicable federal and state regulations, and applicable cleanup authorities. The ''broader'' exclusion for materials that are transferred by the generator to another person or company for reclamation is based on the idea subsequent activities are more likely to involve discard, given that the generator has relinquished control of the hazardous secondary material, and additional conditions are needed for the Agency to determine that these materials are not discarded.

VIII. Recycling Studies

A. Purpose of Studies

In response to the October, 2003 proposal, a number of commenters criticized the Agency specifically for not having conducted a thorough study of the potential impact of the proposed regulatory changes. These commenters expressed the general concern that deregulating hazardous secondary materials that are reclaimed in the manner proposed could result in mismanagement of these materials, and thus could create new cases of environmental damage that would require remedial action under federal or

state authorities. Some of the commenters further cited a number of examples of environmental damage that were attributed to hazardous material recycling, including a number of sites listed on the Superfund National Priorities List (NPL).

However, a number of other commenters expressed the view that the great majority of these cases of recycling-related environmental problems occurred before RCRA, CERCLA or other environmental programs were established in the early 1980s. These commenters further argued that these environmental programs—most notably, RCRA's hazardous waste regulations, and the liability provisions of CERCLA—have created strong incentives for proper management of recyclable materials and recycling residuals. Several commenters further noted that because of these developments, industrial recycling practices have changed substantially since the early 1980s, and present day generators and recyclers are much better environmental stewards than in the pre-RCRA/CERCLA era. Thus, they argued, cases of ''historical'' recycling-related environmental damage are not particularly relevant or instructive with regard to modifying the current RCRA hazardous waste regulations for hazardous material recycling.

In light of these comments and in deliberating on how to proceed with this rulemaking effort, the Agency decided that additional information on hazardous material recycling would benefit the regulatory decision-making process, and would provide stakeholders with a clearer picture of the hazardous material recycling industry in this country. Accordingly, the Agency examined three basic issues that we believed were of particular importance to informing this rulemaking effort:

- How do responsible generators and recyclers of hazardous secondary materials ensure that recycling is done in an environmentally safe manner?
- To what extent have hazardous secondary material recycling practices resulted in environmental problems in recent years, and why?
- Are there certain economic forces or incentives specific to hazardous secondary material recycling that can explain why environmental problems can sometimes originate from such recycling activities?

Reports documenting these studies are in the administrative record for this rulemaking, under the following titles:

- ''An Assessment of Current Good Practices for Recycling of Hazardous Secondary Materials''
- ''An Assessment of Environmental Problems Associated With Recycling of Hazardous Secondary Materials''
- ''Potential Effects of Market Forces on the Management of Hazardous Recyclable Materials''

The findings of these background studies have informed many of the Agency's policy decisions in developing this regulatory proposal. However, it should be understood that these three reports are not definitive, peer-reviewed documents of a technical nature. We fully acknowledge that in some respects they may not paint a complete picture, or capture every detail of the subject matter that was examined. However, we believe that the information in the studies provides an important perspective on current recycling practices, and that it supports our policy direction in developing today's supplemental proposal. EPA solicits comment on the policy and regulatory implications of the information in these studies.

B. Results

1. Successful Recycling Practices

One of the studies that EPA has completed is an examination of what practices many generators and recyclers currently use to ensure that their hazardous secondary materials are recycled safely and responsibly. One purpose of this study was to provide the Agency and the rulemaking record with another angle from which to view the hazardous secondary material recycling industry. In addition, the results of this study suggest what kinds of regulatory controls might be appropriate for these hazardous secondary materials to determine that they are handled as commodities rather than wastes. The practices have helped the Agency develop elements of the supplemental proposal presented today.

The Agency has long heard from various representatives of industry and other stakeholders that management of hazardous secondary materials has changed and improved since the inception of the RCRA hazardous waste regulations in the early 1980s and that these hazardous secondary materials are being managed much more carefully than they were historically. The successful recycling study examines which improved practices are used by many companies in the industry and the reasons the practices are implemented.

To complete this study, EPA spoke with representatives from multiple organizations that regularly manage hazardous secondary materials, both for recycling and for treatment followed by disposal, and examined literature and publicly available information on the Internet focused on the subject of recycling of hazardous secondary materials. The study uses these sources to assemble an overall picture of the good practices that are currently in use by a number of companies. The full study can be found in the docket for today's supplemental proposal, available at *http://www.regulations.gov*.

The successful recycling study found two main drivers behind companies adopting responsible recycling practices in the management of their hazardous secondary materials. The first is concern of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. Under CERCLA, a company can be held liable as an arranger for disposal for contamination caused by its materials sent for recycling at another facility's site. Therefore, it is in that company's best interest to ensure that the facility to which it sends its waste is not likely to become a Superfund site or to fall under CERCLA in the future either because of financial failure or because of bad materials management practices. The threat of Superfund liability was cited by many of the sources for the responsible recycling study as the main reason for the development of their audit programs in this area.

The other reason for adoption of responsible recycling practices cited falls into a broad category of concerns about corporate responsibility and public relations. Many companies now have very public environmental policies and have implemented environmental management systems that are part of their programs for corporate responsibility. Although the real effects of these corporate policies are hard to gauge, EPA observed during this study that audit programs that were developed in response to CERCLA, now are maintained as part of a philosophy of corporate responsibility, which is part of the image a corporation sells to its customers.

EPA found that responsible recycling practices used by generators and recyclers to manage hazardous secondary materials fall into two general categories. The first category includes the audit activities and inquiries performed by a generator of a material to determine whether the entity to which it is sending the hazardous secondary material is equipped to responsibly manage those materials without the risk of releases or other environmental damage. These recycling and waste audits of other companies' facilities form a backbone of many of the transactions in the hazardous secondary

materials market. The second category of responsible recycling practices consists of the control practices that ensure responsible management of any given shipment of hazardous secondary material, such as the contracts under which the transaction takes place and the tracking systems in place that can inform a generator that its hazardous secondary material has been properly managed.

In this study, EPA found that certain generators of hazardous secondary materials perform facility audits—a kind of environmental due diligence—on the facilities to which they send their materials. These audits can take many forms and can be of varying degrees of complexity, depending on the secondary material or, in some cases, on the size and sophistication of the generator. Although large companies are more likely to perform in-depth facility audits, possibly because they more frequently have environmental health and safety divisions coordinating audits or because they may have greater amounts of hazardous secondary materials they are sending off-site, some smaller companies are also performing some kind of audit on the recycling facility receiving the hazardous secondary material.

The exact nature of each generator's audit process will vary, but there are some common elements. Often the audit has two parts: (1) A remote screening audit during which the auditor examines the recycler's compliance history and financial records and the recycler may fill out a questionnaire about its operations and facility and (2) a visit to the recycler's facility, which can take anywhere from several hours to several days. Some common elements examined in both phases of an audit include: (1) Site history; (2) history of compliance with environmental requirements and permits; (3) general appearance and housekeeping at the facility; (4) description of process design and capability; (5) residuals management; (6) financial soundness of the recycler; and (7) possession of adequate pollution liability and general insurance.

In addition to generators auditing recycling facilities, another example of a practice that EPA believes helps to ensure responsible management is the design of hazardous secondary materials recycling contracts and tracking systems to manage information about the location of a particular container and to document its eventual recycling.

Recycling contracts are normal business practice and minimize the potential for recyclers to receive shipments of hazardous secondary materials that they are not equipped to recycle. In these contracts, the two parties can lay out specifications for the make-up of materials being shipped to the recycler and describe the protocol for actions taken if a material not meeting these specifications arrives at the recycling facility. In some cases, the recycler can still handle the material, but may charge the generator an additional fee for having to alter the material to meet specifications. In other cases, the recycler may not be able to accept the material at all. Through the contract mechanism, both parties then agree on whether that hazardous secondary material should be returned to the generator or sent to a different recycler or waste disposal facility.

EPA also found that knowing whether materials conform to the contract specifications necessitated sampling of the hazardous secondary material arriving at a recycler. Several recyclers told EPA that they sample each rail car, truck, and drum arriving at their facilities before accepting them. Legitimate recycling practices operate as a manufacturing process might and there is tight control over the nature of the materials being recycled. Recyclers who are seeking to make a salable product will make sure that the inputs meet specifications.

Due to time and resource limitations, EPA's examination of successful recycling practices was not exhaustive, as we were able to gather information from a limited number of sources. We believe that the practices and situations outlined in the study are representative of industry practices performed by many companies, but ask today for comments on the results of the study and for relevant information not represented therein.

2. Environmental Problems Associated With Recycling of Hazardous Secondary Materials

a. *Scope and objectives of the study.* The general goal of this study was to identify and characterize environmental problems that have been attributed to some type of hazardous secondary material recycling activity, and that are relevant for the purpose of this rulemaking effort. The Agency believes that discarding is more likely to occur if environmental problems exist. Specifically, we sought to identify the following types of cases:

- Cases where environmental damage clearly can be attributed to some type of recycling activity. In conducting this study, we limited our search to those environmental problems in which environmental damages were clearly caused by some type of recycling-related activity. In this context, ''recycling-related activities'' included—
- accumulation or storage of hazardous secondary materials by the generator, the recycler or an intermediary;
- illegal disposal or abandonment of recyclable hazardous secondary materials or recycling residuals;
- transportation of recyclable hazardous secondary materials;
- ''sham'' recycling operations (i.e., illegal disposal or treatment disguised as recycling);
- production and/or use of contaminated products from recycled hazardous secondary materials, reclamation and/or production processes;
- management of residuals from reclamation or production processes, or
- other activities associated with the management of recyclable hazardous secondary materials, recycling residuals, or the products of recycling processes.

The study identified a number of cleanup sites at which a recycling process had operated, but where other sources of contamination made it extremely difficult to determine with any certainty that the recycling activity contributed to the environmental problems at the site. These cases were not included in this study.

- Relatively recent cases. Many of the environmental problems that were examined in the course of this study occurred before RCRA, CERCLA or other environmental programs were established in the early 1980s. The Agency believes that, for the purpose of this rulemaking effort, these ''historical'' recycling-related damage cases are much less relevant and instructive than cases which have occurred within the current regulatory and liability ''landscape.'' This belief is based in large part on the findings of our companion study of current good hazardous secondary material recycling practices, which indicate that in today's era (though there are exceptions), most generators and recyclers are aware of their environmental responsibilities, and generally make considerable efforts to ensure that materials are recycled and otherwise managed responsibly. Therefore, all the cases included in the data for this study occurred after 1982.
- Cases involving recycling of regulated hazardous secondary materials that are specifically excluded from RCRA regulation. The study was intended to identify environmental problems associated with recycling of regulated hazardous secondary materials, as well as those involving the recycling of hazardous secondary materials that are not regulated because

they are subject to a specific regulatory exemption or exclusion (see, for example, the exclusions in 40 CFR 261.4). The Agency was interested in these types of problems because they may indicate the extent to which environmental damages can occur even when recycling is conducted under a stringent regulatory regime, and whether such environmental problems may be more or less prevalent for materials that are not regulated as hazardous wastes. The study was not designed to identify cases involving recycling of non-hazardous materials such as paper, glass, rubber, or plastics.

b. *Methodology.* The initial task of this study was to identify as many recycling-related environmental problems that were relevant to the scope and purpose of the study as possible (the preceding section of this preamble describes the types of cases that were considered relevant to the study). Potential cases were identified from a variety of sources, including:

- Comments on the October 28, 2003, proposed rule
- The Superfund National Priorities List
- National EPA data bases maintained for the CERCLA, RCRA, and enforcement programs
- Contacts with staff in state environmental agencies
- Contacts with staff in EPA Regional Offices
- State agency data bases maintained for state Superfund programs and other environmental programs
- Internet searches
- News media reports

For those environmental problems found at recycling facilities or resulting in the mismanagement of hazardous secondary materials to be recycled that were relevant to the study, we gathered available information to identify certain key facts relating to when the problem occurred, the type of recycling practice involved, the types of materials recycled, how and why the environmental damage occurred, and other key data (these data are summarized in tabular form in Appendix 1 of the report entitled The Assessment of Environmental Problems Associated With Recycling of Hazardous Secondary Materials). A written description of each case was then prepared—these are in Appendix 2 of the same report.

Many of the cases that were investigated, including many of the Superfund sites, were well-documented, and we were able to assemble relatively complete profiles for those cases. For many other cases, however, much less complete information was available, while at some of the sites, we were able to collect only very basic information.

In addition, because of time and resource limitations, the search for potentially relevant cases was not exhaustive. For example, we did not systematically survey all state environmental agencies for relevant cases, nor did we search paper files in EPA Regional Offices. Because of this relatively limited scope, we believe that the cases we have identified and described in this report in effect represent those that were relatively easy to find, and that there are likely to be additional cases that we did not identify. However, we have no reason to think that additional cases would substantially change the overall picture. Nevertheless, the Agency requests information on relevant cases of environmental problems that we did not identify, as well as comments or supplemental information on those that were characterized in the report. If you provide data on additional cases of environmental problems from recycling, Appendix 2 of the study is a good resource for the types of information most useful to the Agency, particularly when the problem occurred; the type of recycling practice involved; whether recycling occurred at an on-site or off-site recycling facility; the types of hazardous secondary materials being recycled; and how and why the problem occurred.

c. Summary of findings. The study identified 208 cases in which environmental damages of some kind occurred from some type of recycling activity and that fit the scope of the study. Such damages included leaks, spills, dumps, or other types of releases that were serious enough to require some type of cleanup action. They also included instances where materials were abandoned (e.g., in warehouses) and which required removal overseen by a government agency and expenditure of public funds. However, the study did not include situations in which environmental regulatory violations occurred, but did not result in actual damage to the environment or human health.

With regard to the types of materials associated with the cases that were documented in the study, most common were scrap metals, solvents, used oil, non-ferrous metals, lead-acid batteries, and used drums sent for cleaning and reconditioning. Less common were cases involving mercury, precious metals, and hazardous foundry sands.

The types of environmental damage that occurred varied widely; many were relatively small incidents involving contaminated soils and/or residuals, such as battery casings, while a number were much more substantial and expensive, with large-scale soil and ground water contamination, and remediation costs in the tens of millions of dollars. A surprising number of cases (sixty-nine) involved materials that were abandoned in one way or another.

The study also tried to identify the cause of the environmental problems for each case that was investigated. In large part, we were able to identify, or at least infer, how the problems occurred, although for four percent of the cases examined, we were unable to determine the primary cause of damage. However, in only a few cases were we able to identify with any certainty why they occurred. For example, in approximately one-third of the cases, we were able to conclude that mismanagement of recycling residuals was at least partly the cause of contamination problems. We were unable, however, to identify why the residuals were managed improperly.

Mismanagement of the hazardous secondary materials prior to their reclamation or reuse caused contamination at forty percent of sites, whereas mismanagement of recycling residuals was the primary cause at thirty-four percent of the sites. Often, at the latter category of sites, reclamation processes generated residuals in which the toxic components of the recycled materials became concentrated, and these wastes were then mismanaged. Examples of this include a number of drum reconditioning facilities, where large numbers of used drums were cleaned out to remove small amounts of remaining product such as solvent, and these wastes were then improperly stored or disposed of.

As already noted, sixty-nine of the cases examined in the study involved abandonment of recyclable hazardous secondary materials as the primary cause of damage. In most of these cases, business failure appears to have been the main reason the hazardous secondary materials were abandoned. Seven of the cases that were examined appear to have been outright ''sham'' recyclers. In most of these cases, companies advertised themselves to local generators as recyclers and accumulated considerable quantities of waste materials, but did not actually recycle them. These sites were also then abandoned.

Since a considerable number of commenters to the October 2003 proposal supported the idea of a regulatory exclusion for on-site recycling (i.e., at the generating facility), the study also distinguished between environmental problems from recycling

that occurred at off-site, commercial recycling facilities, and those from recycling on-site. Thirteen (6%) of the 208 cases were determined to be from recycling that occurred on-site. This relatively small proportion of cases may signify that on-site recycling is inherently less likely to result in environmental problems, for various reasons. However, it may also be that recycling conducted at facilities generating hazardous secondary materials occurs at fewer facilities than recycling by commercial facilities or that these types of environmental problems are not as well documented, or for other reasons are more difficult to identify, given the scope and methodology of the study. The Agency solicits comment and additional data on the issue of environmental problems from on-site recycling that occurred since 1982 and where the problems are clearly attributable to the recycling activity. We are particularly seeking facts about any instances that are not captured in the study, particularly answering the questions of when the recycling took place, what type of recycling practices were involved, what the environmental problem was, and what caused the problem.

The study also addressed whether or not instances of environmental damage occurred at hazardous waste recycling facilities with RCRA permits (**Note:** RCRA does not require Part B permits for the recycling processes themselves; typically, permits are issued to such facilities when hazardous secondary materials are stored prior to recycling.) RCRA permitted hazardous waste management facilities are subject to relatively stringent, facility-specific requirements, and in general are given more oversight by regulatory agencies than facilities without permits. For these reasons, these cases are of particular interest to the Agency with regard to this rulemaking.

Twenty-four of the cases identified were, at one time or another, operating under RCRA hazardous waste permits. However, only nine clearly appear to have been operating under RCRA permits at the time the damage occurred. Two of these cases involved fires and/or explosions.

The study also looked at some of the financial circumstances regarding clean up of environmental problems. At thirteen of the twenty-four hazardous waste permitted facilities, all or part of the funds used to clean up environmental damages were contributed by the owner/operator of the facility, either voluntarily or under some form of consent agreement. In at least two of these cases, it appears that cleanup funds became available by means of a RCRA-required financial assurance mechanism, such as a surety bond. Thirteen of the facilities appear to have been cited for serious permit violations, either before or as a result of the damage incident. In four cases, the facility permits were revoked because of compliance issues. Eleven of the twenty-four facilities were found to be no longer in business, because of bankruptcy or for other reasons.

Of the 208 cases that were documented in the study, fifty-one were or are listed on the CERCLA National Priorities List (NPL). Fifty-five additional cases were addressed under CERCLA authorities, but the sites were not listed on the NPL. State cleanup authorities were used to address sixty-five of the cases, while thirty were addressed using RCRA corrective action authorities. For nineteen of the cases, we were unable to identify what remedial program, if any, was used to clean up the sites. (In some cases, there was more than one type of cleanup action at a site).

For eighty-nine of the cases, we were able to identify the costs, or at least cost estimates, associated with addressing the environmental problems caused by recycling activities. Thirty-seven of these cases required less than one million dollars to clean up; forty-four cost between one and ten million dollars; and eight cost more than ten million dollars to remediate.

It is possible that these cost data are incomplete and are not an accurate representation of actual cleanup costs for the entire sample of 208 cases. For one thing, cost data were much easier to find for CERCLA-lead cleanups than cleanups done under other programs. Another uncertainty with regard to these cost data is that in some cases, it was not possible to distinguish between cleanup costs that were incurred specifically to address recycling-related contamination, and costs for other cleanup activities at the site. The Agency solicits additional information from commenters regarding cleanup costs (actual or estimated) incurred in remediating these recycling-related environmental problems.

C. Potential Effects of Market Forces on the Management of Recyclable Hazardous Secondary Materials

EPA also has completed a study of how market forces can affect the management of recyclable hazardous secondary materials. This study uses economic theory to describe how various market incentives can influence a firm's decision making process when the recycling of hazardous secondary material is involved. Because the study is largely theoretical, the results should be interpreted with caution, but it does provide insights that can explain some of the possible fundamental economic drivers of both the successful and unsuccessful recycling practices, which in turn help us to design the exclusions that we are proposing today.

The October 2003 proposal was based in part on the premise that some types of recycling are more akin to manufacturing than waste management and therefore are not appropriate for regulation as waste management. [''In EPA's view, a recycler will value secondary materials that provide an important contribution to his process or product and will manage them in a manner consistent with a valuable feedstock material (i.e., will manage them to minimize their loss)''; 68 FR 61583].

However, as pointed out by some commenters to the proposed rule, the economic forces shaping the behavior of firms that recycle hazardous secondary materials can be different from those at play in manufacturing processes using virgin materials. For example, the inherent value of hazardous secondary materials can be much lower than virgin materials used in manufacturing, resulting in a different set of economic incentives. Additionally, different economic incentives between the recycling of hazardous secondary materials and manufacturing may arise due to differences in these two business models. As opposed to manufacturing, where the cost of raw materials or intermediates (or inputs) is greater than zero and revenue is generated primarily from the sale of the output, some models of hazardous materials recycling involve generating revenue primarily from receipt of the hazardous secondary materials. Recyclers of hazardous secondary materials in this situation may thus respond differently from traditional manufacturers to economic forces and incentives.

An increased understanding of these aspects of hazardous secondary material recycling can help to craft a rule that takes advantage of the positive economic forces, and compensates for the negative ones, in order to produce an optimal amount of recycling. An optimal amount of recycling is one that maximizes the net benefits (private and social benefits minus private and social costs). One sub-optimal outcome of not providing a proper balance could be too little recycling, resulting in inefficiencies. In this case, increasing the rate of recycling (for example, via today's proposed changes) would realize additional net benefits. However, sub-

optimal outcomes can also result from too much of an activity. For hazardous secondary material recycling, this situation occurs when firms accumulate more hazardous secondary material than can be recycled in a reasonable timeframe, or operate their recycling process in a way that imposes excessive costs on society (such as excess pollution or mishandling of hazardous secondary material) and that can result in the material being discarded.

The market incentive study uses economic theory to provide information on how certain characteristics can influence three different recycling models to encourage or discourage an optimal outcome. The three recycling models examined are: (1) Commercial recycling, where the primary business of the firms is recycling hazardous secondary materials, which are accepted for recycling from offsite industrial sources (which usually pay a fee); (2) industrial intra-company recycling, where firms generate hazardous secondary materials as byproducts of their main production processes and recycle the hazardous secondary materials for sale or for their own reuse in production; and (3) industrial inter-company recycling, where firms whose primary business is not recycling, but use or recycle hazardous secondary materials obtained from other firms with the objective of reducing the cost of their production inputs.

For each of these recycling models, the report looks at how they are potentially affected by three market characteristics: (1) Value of the recycled product; (2) price stability of recycling output or inputs; and (3) net worth of the firm.

For all three models of hazardous secondary material recycling, a recycled product with a high value appears to contribute to an optimal outcome for hazardous secondary material recycling. For commercial and industrial inter-company firms, the value of the product can serve as a strong incentive for the firm to recycle the product with care and bring it to the market. Recycling by these firms would thus be driven primarily by the potential revenues from the recycled product, and not by other factors such as an acceptance fee. For industrial intra-company recyclers, the value of the recycled product would contribute to optimal recycling behavior even if the firm is reusing the product in its own production process instead of selling it to outside firms. Conversely, for all three models of hazardous secondary material recycling, a recycled product with a low value could be a potential indicator of sub-optimal recycling outcomes. For commercial firms in particular, the acceptance fee is likely to be a much more prevalent factor in the firm's revenue structure when the recycled product has a low value. If the value of the recycled product is low, the firm may have more of an incentive to focus on accepting hazardous secondary material than properly recycling it and selling a low-value recycled product.

Price stability is another potential indicator of hazardous secondary material recycling markets that produce optimal outcomes, particularly for commercial recyclers. When prices are stable, firms can more easily adjust their production in response to the price signals they receive from the market. They are thus less subject to sudden upsets to their revenue streams or costs which could force them to operate at a short or long-term loss. Unstable markets can contribute to sub-optimal outcomes, due to an unexpected fall in revenues or rise in costs, such that the firm is no longer able to cover the costs incurred to make the product. This could encourage the stockpiling of hazardous secondary material by the firm in order to continue collecting the acceptance fee. A commercial firm's choice to shut down can also contribute to sub-optimal recycling outcomes if this involves the abandonment of hazardous secondary material that the firm was stockpiling on-site. Since industrial intra- and inter-company recyclers are also recycling to produce a marketable product, they are subject to similar forces as commercial firms. They are less constrained in their responses to these forces, however, since recycling is not their primary business operation, and are able to switch from recycling to disposal, or from using recycled materials to raw materials, if market conditions shift.

For all three recycling models, firms that have a higher net worth have more to lose from liability issues and thus have a greater incentive to invest in safe hazardous secondary material management and recycling practices. These firms would have more incentive to practice recycling in an environmentally safe manner and also to insure against possible liability risks that would jeopardize their investments. Firms that have a relatively low worth and do not have an established history in the market could be potentially more likely to face incentives that could cause them to engage in recycling practices that impose few controls or cut corners in order to boost revenues. While we recognize that it should not be assumed that all low-value firms would engage in such practices, this can be viewed as one potential indicator of risky behavior.

As mentioned earlier, using economic theory to interpret recycling behavior should be done with extreme caution. An individual firm's decision-making process is based on many factors, and attempting to extrapolate a firm's likely behavior from a few factors, particularly based on theoretical considerations, could lead to erroneous conclusions. However, when used in conjunction with other pieces of information, the economic theory can be quite illuminating. For example, because the industrial intra- and inter-company recyclers have more flexibility (e.g., during price fluctuations, these companies can more easily switch from recycling to disposal or from recycled inputs to virgin inputs), they would be less likely to have environmental problems from over-accumulated materials. This outcome appears to be supported by the results of the assessment of environmental problems study (see section VIII.B.2 of today's supplemental proposal).

On the other hand, certain specific types of commercial recycling, where the product has low value, the prices are unstable, and/or the firm has a low net worth, could indicate that it is more likely for environmental problems to occur from over-accumulation of recycled materials, compared to recycling by a well-capitalized firm that yields a product with high value. Again, this outcome appears to be supported by the results of the assessment of environmental problems study (see section VIII.B.2 of today's supplemental proposal).

However, as shown by the study of successful recycling practices, generators who might otherwise bear a large liability from poorly managed recycling at other companies have addressed this issue by carefully examining the recyclers to which they send their hazardous secondary materials to ensure the recyclers are technically and financially capable of performing the recycling (see section VIII.B.1 of today's supplemental proposal). In addition, we have seen that successful recyclers (both commercial and industrial) have often taken advantage of mechanisms such as tolling contracts to help stabilize price fluctuations, allowing recyclers to plan their operations better.

For further discussion of this study, please see *A Study of Potential Effects of Market Forces on the Management of Hazardous Secondary Materials* in the docket for today's supplemental proposal.

IX. Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator: Proposed 40 CFR 260.0, 261.2(a)(1), 261.2(a)(2), 261.2(c)(3), 261.4(a)(23)

A. Purpose of the Exclusion

In the October 2003 proposal, EPA proposed to exclude from the definition of solid waste hazardous secondary materials generated and reclaimed in a continuous industrial process within the same industry. ''Same industry'' was defined as industries sharing the same four-digit North American Industry Classification System (NAICS) code. We also co-proposed a second option, under which such materials would not be eligible for the exclusion if the reclamation took place at a facility that also recycled regulated hazardous wastes generated in a different industry. EPA chose the NAICS system as a way to define ''same industry'' because the system is already widely used to classify different industries. We recognized that the system was developed for statistical rather than regulatory purposes. However, the NAICS scheme employs a production-oriented concept, grouping together industries that have similar or identical production processes. In addition, the regulated community is generally familiar with the NAICS system. For these reasons, the Agency proposed this system to define ''same industry''.

EPA chose the four-digit NAICS level (rather than the three or five-digit level) because that level appeared to be an appropriate compromise between being too broad or too restrictive. The Agency evaluated the potential recycling opportunities available through defining ''same industry'' at the three, four, and five-digit levels. We performed the analysis for the chemical manufacturing sector, which contains many RCRA hazardous waste generators and served as a surrogate for other manufacturing sectors. In general, we found that classification at the three-digit level led to grouping facilities that did not have similar production processes. Classification at the five-digit level, on the other hand, led to grouping similar processes, but greatly reduced opportunities for recycling.

In the same notice, EPA also solicited comment on several different alternatives to the proposed exclusion. The first alternative was whether to exclude from the definition of solid waste those hazardous secondary materials that are generated and reclaimed in a continuous process on-site (as defined in 40 CFR 260.10), even if different industries were involved. This option would also have required the same notification and speculative accumulation provisions proposed for the proposed option. This exclusion would be based on the premise that materials recycled on-site in a continuous process are unlikely to be discarded because they would be closely managed and monitored by a single entity who is intimately familiar with both the generation and reclamation of the material. In addition, no off-site transport of the hazardous secondary material (with its attendant risks) would occur, and there would be few questions about potential liability in the event of mismanagement or mishap. An example of such recycling given in the proposal was a facility that produces petrochemicals, as well as pharmaceuticals. Under the four-digit NAICS-based proposal, such reclamation would not have been excluded even if both establishments were located at the same site and operated by the same company. Another example might be a situation where a generator contracts with a different company to reclaim material at the generator's facility, possibly through a mobile treatment unit.

The second alternative was an exclusion for certain situations within the chemical manufacturing industry that might present unique recycling situations. Specifically, within the chemical manufacturing industry, the first manufacturer will contract out production of certain chemicals to another manufacturer (referred to as batch or tolling operations). The second manufacturer may generate hazardous secondary materials that could be returned to the larger chemical manufacturer for reclamation. In the proposal, we inquired whether some recycling could be precluded as a result of uncertain application of the NAICS classification approach due to frequently changing product slates, or different products being produced from the same equipment at different times.

The third alternative would have provided a broader conditional regulatory exclusion from RCRA regulation for essentially all hazardous secondary materials that are legitimately recycled by reclamation. The purpose of this broader exclusion would be to encourage recycling and lower costs, while still protecting human health and the environment. The Agency suggested that additional requirements or conditions might be appropriate to protect human health and the environment for this exclusion, compared to the same-industry exclusion that we proposed. Examples of such additional conditions could include record-keeping and reporting requirements, along with safeguards on storage or handling. Although the Agency solicited comment on additional conditions, the discussion in the preamble of this approach was brief and may not have provided sufficient information to commenters. Like the other exclusions discussed in the October 28, 2003 proposal, hazardous secondary materials used in a manner constituting disposal, burned for energy recovery, or materials that were inherently waste-like would not be eligible. The Agency solicited comment on the increased recycling and reuse that would result from broadening the rule in this way, as well as comment on the potential effects to human health and the environment.

EPA received many comments on the NAICS ''same industry'' scheme from various stakeholders. Many commenters did not agree that NAICS was an appropriate way to define ''same industry''; more importantly, most commenters did not agree that excluding recycling within the same industry was justified on legal or pragmatic grounds. These commenters generally stated that EPA's proposed exclusion did not accurately reflect Congressional intent or court mandates concerning EPA's authority over legitimate recycling. They reiterated that EPA's RCRA authority extends only to materials that are truly discarded (i.e., disposed of, thrown away, or abandoned) and that have not yet become part of the waste disposal problem. Many of these commenters interpreted the relevant court decisions to mean that any legitimately reclaimed material (whether recycled within the same industry or between industries) is not ''discarded'' and thus cannot be regulated as a solid waste. Some of these commenters cited the ''*Safe Foods*'' decision (*Safe Food and Fertilizer, et al.,* v. *EPA*, 350 F.3d 1263, DC Cir. 2003) as support for their contention that materials recycled in different industries were not discarded.

Other commenters said that they would not benefit from the proposed exclusion because so many recycling opportunities occur among different industries. These commenters included companies in the metals recycling industry, mining and mineral processors, specialty batch chemical manufacturers, some solvent recyclers, the paint and coatings industry, spent pickle liquor generators, and small businesses.

Still other commenters argued that the Agency had read the court decisions too broadly rather than too narrowly, but some of these commenters also said that

EPA had failed to present a reasoned analysis of the indicia of discard. One commenter stated that EPA did not analyze potential environmental harm from the proposed rule.

Many commenters, on the other hand, responded positively to the Agency's solicitation of comment about excluding on-site recycling from the definition of solid waste. These commenters agreed with EPA's suggestion that generators who recycle materials on-site (even if the reclamation takes place in a different NAICS code) are likely to be familiar with the material and more likely to maintain responsibility for the materials. Some commenters wanted any exclusion confined to on-site recycling, but other commenters suggested that EPA expand any on-site exclusion to include recycling (including off-site recycling) conducted within the same company. These commenters believed that the principal reasoning applied to on-site recycling would also apply to same-company recycling—i.e., that the same entity would be familiar with the material and would remain responsible for it.

Concerning our solicitation of comments on tolling arrangements, some stakeholders commented that the specialty batch chemical industry, in particular, might present unique situations regarding appropriate exclusions, principally due to the varying nature of production and hence of potential hazardous secondary materials available for recycling. Because of these circumstances, stakeholders believed that exclusions targeted to the types of tolling arrangements common in this industry would be easier to implement.

After evaluating the comments, the Agency has concluded that its proposed approach to ''same industry recycling'' does not accurately delineate EPA's RCRA jurisdiction over hazardous secondary materials. We agree with the many commenters who said that whether materials are recycled within the same NAICS code is not an appropriate indication of whether they are discarded. NAICS designations are designed to be consistent only with product lines, so that the effect of our October 2003 proposal would be that materials generated and reclaimed under the control of the generator would not be excluded, even though the generator has not abandoned the material and has every opportunity and incentive to maintain oversight of, and responsibility for, the material that is reclaimed (see *ABR*, 208 F.2d at 1051 (noting that discard has not taken place where the producer saves and reuses secondary materials)). Under these circumstances, we believe that discard has generally not occurred. For example, of the 208 recycling cases that caused environmental damage, only thirteen (approximately six percent) occurred as a result of on-site recycling. We also agree with those commenters who said that most of this rationale would apply just as reasonably to reclamation taking place within the same company. In the case of same-company recycling, both the generating facility and the reclamation facility (if they are different) would be familiar with the hazardous secondary materials and the parent company would be ultimately liable for any mismanagement of the hazardous secondary materials. Under these circumstances, the incentive to avoid such mismanagement would be so strong that mismanagement also would be very unlikely.

Concerning tolling arrangements, we also believe that the type of tolling contract common in the specialty batch chemical industry does not constitute discard as long as the recycling is legitimate and the hazardous secondary material is not speculatively accumulated. Under a typical type of arrangement, one company (the tolling contractor) contracts with a second (often smaller) company (the batch manufacturer) to produce a specialty chemical (sometimes because of a temporary lack of capacity, or because the batch manufacturer has specialized equipment or expertise). The batch manufacturer produces the chemical and the production process generates a hazardous secondary material (such as a solvent) which is routinely reclaimed at the tolling contractor's facility through an exempt closed-loop recycling process when it has the capacity to manufacture the chemical in question at its own facility. However, if the batch manufacturer transports the hazardous secondary material back to the tolling contractor for reclamation, the tolling contractor would be deemed under existing regulations to be reclaiming a spent material, and an RCRA storage permit would generally be required. The typical contract in the specialty batch chemical industry contains detailed specifications about the product to be manufactured, including management of any hazardous secondary materials that are produced and returned to the tolling contractor for reclamation. Under this scenario, the hazardous secondary material continues to be managed as a valuable product, so discard has not occurred. Moreover, if hazardous secondary materials are generated and reclaimed pursuant to a written contract between a tolling contractor and a batch manufacturer, and if the contract specifies that the tolling contractor retains ownership of, and responsibility for, the hazardous secondary materials, there is a strong incentive to avoid any mismanagement or release.

In today's supplemental notice, EPA has described three general situations where we believe that discard has not taken place and where the potential for environmental releases is therefore low. The three situations involve circumstances under which hazardous secondary materials are generated and reclaimed within the United States or its territories. They are either generated and reclaimed at the generating facility, at a different facility, but within the same company, or through a tolling arrangement. Because the facility owner in these situations still finds value in the hazardous secondary materials, has retained control over them, and intends to use them, EPA is proposing to exclude these materials from being a solid waste and thus from regulation under Subtitle C of RCRA, if the recycling is legitimate (see 40 CFR 261.4(g)), and if the hazardous secondary materials are not speculatively accumulated. We are proposing slightly different exclusions, depending on whether or not the excluded hazardous secondary materials are stored in land-based units prior to reclamation or as part of the reclamation process. The scope and applicability of the exclusions are described below.

B. Scope and Applicability

1. Hazardous Secondary Materials Managed Under the Control of the Generator in Non-Land-Based Units

As stated above, the Agency generally believes that discard has not occurred if hazardous secondary materials are legitimately recycled under the control of the generator, provided they are not speculatively accumulated, and provided they are reclaimed within the United States or its territories. We are therefore proposing an exclusion for these hazardous secondary materials under § 261.2(a)(2)(ii), except if such materials are managed in a land-based unit prior to reclamation or as part of the reclamation process. See section B.2 below for discussion of management in land-based units. Examples of non-land-based units include, but are not limited to, tanks, containers, and containment buildings.

The definition of ''hazardous secondary material generated and reclaimed under the control of the generator'' is proposed in 40 CFR 260.10 and consists of three parts. The first part

of the definition would apply to hazardous secondary materials generated and reclaimed at the generating facility. This definition would include situations where a generator contracts with a different company to reclaim hazardous secondary materials at the generator's facility, either temporarily or permanently. For purposes of this exclusion, ''generating facility'' means all contiguous property owned by the generator. We are proposing to exclude hazardous secondary material that is reclaimed ''at the generating facility'' rather than ''on-site'' as defined in 40 CFR 260.10 (as we proposed in October 2003) because the latter definition may encompass facilities not under the control of the generator. For example, an industrial park meets the definition of ''on-site,'' even though facilities operating at an industrial park may be completely separate and under separate ownership. However, EPA solicits comment on whether facilities under separate ownership, but located at the same site, should be included within this proposed exclusion. Additionally, EPA solicits comment on other definitions which might be equally compatible with generator control as the definition proposed in today's notice.

The second part of the definition of hazardous secondary materials generated and reclaimed under the control of the generator would apply to hazardous secondary materials generated and reclaimed by the same company (i.e., by the same ''person'' as defined in § 260.10). The generator must certify that the hazardous secondary materials will be sent to a company under the same ownership as the generator, and that the owner corporation has acknowledged full responsibility for the safe management of the hazardous secondary materials. Because of existing complexities in corporate ownership and liability, we are proposing to require the generator to certify regarding ownership and responsibility for the recyclable hazardous secondary materials. EPA solicits comment on any other certification language that might accomplish the same end, and we also seek comment on other definitions of ''same-company.''

The third part of the definition of hazardous secondary materials generated and reclaimed under the control of the generator would apply to hazardous secondary materials that are generated pursuant to a written contract between a tolling contractor and batch manufacturer and reclaimed by the tolling contractor. Under today's proposal, the tolling contractor must retain ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture. For purposes of this exclusion, tolling contractor means a person who arranges for the production of a product made from raw materials through a written contract with the batch manufacturer. Batch manufacturer means a person who produces a product made from raw materials pursuant to a written contract with a tolling contractor. As stated above, this type of contract appears to be common within the specialty batch chemical manufacturing industry.

EPA notes that in order to be eligible for this exclusion, it is not a requirement that the contractual arrangement in question refer specifically to ''tolling'' or ''batch manufacturing,'' as long as the person commissioning the manufacture of the product retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture. The Agency also solicits comment on other types of contractual arrangements under which discard is unlikely to happen and which could appropriately be covered by an exclusion for ''generator-controlled'' hazardous secondary material. For example, one company may enter into a contractual arrangement for a second company to reclaim and reuse (or return for reuse) the first company's hazardous secondary material. The first company could create a contractual instrument that exhibits the same degree of control over how the second company manages the hazardous secondary material as is found in a tolling agreement. EPA solicits comment on whether hazardous secondary materials recycled under such contracts also should be included within the scope of the exclusion.

2. Hazardous Secondary Materials Managed Under the Control of the Generator in Land-Based Units

As stated above in section B.1 of this preamble, the exclusion proposed today at 40 CFR 261.2(a)(2)(ii) would apply to materials generated and reclaimed within the United States or its territories that are under the control of the generator and that are stored in non-land-based units. However, some hazardous secondary materials that are generated and reclaimed within the United States or its territories under the control of the generator (i.e., at the generating facility, within the same company, or through a tolling arrangement) are managed in units that are land-based. For these materials, we are proposing a slightly different exclusion at 40 CFR 261.4(a)(23).

The Agency is proposing to place this exclusion in 40 CFR 261.4(a)(23) because while we recognize that raw materials and hazardous secondary materials can be and are stored in land-based units (such as mineral processing residues or pulping liquors), we also recognize that such management clearly presents a greater potential for releases to the environment than management in non-land-based units. Therefore, we are proposing an additional requirement which provides that if hazardous secondary materials are managed in land-based units, such materials must be contained in the units. We are not proposing that the units meet any particular design requirement or that the hazardous secondary materials in the unit be managed in a particular way. Rather, we are only proposing that the hazardous secondary material in the unit be ''contained'' and not released into the environment. The definition of land-based unit is proposed in § 260.10, and is taken from section 3004(k) of RCRA (i.e., landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave). Examples of surface impoundments include ditches and sumps.

Whether the hazardous secondary material is ''contained'' in the land-based unit will necessarily be determined on a case-by-case basis. Generally, however, recyclable material is ''contained'' if it is placed in a unit that controls the movement of the hazardous secondary material out of the unit. Hazardous secondary material that remains contained in a land-based unit that experiences a release would still meet the terms of the exclusion in 261.4(a)(23), unless the hazardous secondary material is not managed as a valuable product and as a result, a significant release from the unit occurs. In this situation, the hazardous secondary material in the land-based unit would be considered discarded. In determining whether hazardous secondary materials in a land-based unit are contained, a facility should consider the circumstances under which the materials are stored. For example, materials that are stored in direct contact with the soil in a natural or man-made impoundment may be more likely to leak. However, the local geological and meteorological conditions can greatly influence whether such materials would be contained. These local conditions, along with specific measures that a facility employs, such as liners, leak detection

measures, inventory control and tracking, control of releases, or monitoring and inspection during construction and operation of the unit, may be used in determining whether the hazardous secondary material is contained in the land-based unit.

3. Hazardous Secondary Materials Managed Under the Control of the Generator: General Provisions

Hazardous secondary materials released from any storage unit, whether land-based or non-land based, are discarded and if such materials upon discard would be either a listed hazardous waste or exhibit a hazardous waste characteristic, the hazardous secondary materials would be part of the waste disposal problem and would be subject to the hazardous waste regulations, unless they are immediately cleaned up.

We also note that hazardous secondary materials excluded from the definition of solid waste generally become wastes when they are speculatively accumulated, because at that point they are considered to be discarded. For this reason, all hazardous secondary materials excluded under proposed 40 CFR 261.2(a)(2)(ii) or 261.4(a)(23) would be subject to the speculative accumulation provisions of 40 CFR 261.1(c)(8). In addition, as with other excluded recycling operations, residuals from the recycling process are considered to be newly generated solid wastes, which can also be hazardous wastes if they exhibit a hazardous characteristic under Subpart C of Part 261 or if they are specifically listed under Subpart D of Part 261.

The Agency is soliciting comment on whether additional requirements might be necessary to demonstrate absence of discard when hazardous secondary materials are recycled under proposed 40 CFR 261.2(a)(2)(ii) or 261.4(a)(23). Our analysis has led us to conclude that discard has not occurred and releases are highly unlikely when hazardous secondary materials are generated and reclaimed under these circumstances, except possibly when such materials are managed in land-based units. Nevertheless, we are requesting comment on other points of view. An example of such conditions would be recordkeeping requirements, such as those proposed today in 40 CFR 261.4(a)(24)). Another example would be appropriate limitations on storage, such as performance-based standards designed to address releases to the environment. The Agency solicits comment on whether additional management requirements are appropriate for hazardous secondary materials that are generated and reclaimed under the control of the generator. If commenters believe such additional requirements are appropriate, they should specify the technical rationale for each requirement suggested, and why the requirement is necessary if the hazardous secondary material remains under the control of the generator.

We are also proposing that generators (and reclaimers, where the generator and reclaimer are located at different facilities) of hazardous secondary materials recycled under the control of the generator, whether managed in a land-based or non-land based unit, would be required to submit a one-time notice to the EPA Regional Administrator or, in an authorized state, to the state Director. The notice would need to identify the name, address, and EPA ID number (if it has one) of the generator or reclaimer, the name and phone number of a contact person, the type of hazardous secondary material that would be managed according to the exclusion, and when the hazardous secondary materials would begin to be managed in accordance with the exclusion. A revised notice would be required to be submitted in the event of a change to the name, address, or EPA ID number of the generator or reclaimer or a change in the type of hazardous secondary material being recycled.

The intent of this proposed notification requirement is to provide basic information to regulatory agencies about who will be managing hazardous secondary materials under the exclusion, and the types of hazardous secondary materials that would be recycled. For hazardous secondary materials that would be excluded under 40 CFR 261.2(a)(2)(ii), this proposed notification requirement would be specified in 40 CFR 260.42 (i.e., separate from 40 CFR 261.2). For hazardous secondary materials that would be excluded under 40 CFR 261.4(a)(23), this proposed notification requirement is included in the exclusion. We note that in both cases, the requirement to provide this notification would not be a condition of the exclusion. Thus, failure to comply with the requirement would constitute a violation of RCRA, but would not affect the excluded status of the waste.

We believe our authority to request such information is inherent in our authority to determine whether a material is discarded, and we consider this to be the minimum information needed to enable credible evaluation of the status of a hazardous secondary material under section 3007 of RCRA. EPA further believes that RCRA section 3007 allows it to gather information with regard to any material when the Agency has reason to believe that the material may be a solid waste and possibly a hazardous waste within the meaning of RCRA section 1004(5). Section 2002 also gives EPA authority to issue regulations necessary to carry out the purposes of RCRA.

We also note that after EPA promulgates regulations listing a material as a hazardous waste or identifying it by its characteristics, section 3010 of RCRA requires generators of such materials to submit a notification to EPA within 90 days. Since the changes proposed today could substantially affect this universe of facilities in the Subtitle C system, we believe the notifications are appropriate and useful.

EPA notes that the information discussed above can be difficult for regulatory authorities to retrieve and use if it is not placed into a data management system. Similarly, using different notification procedures and data management systems for different regulated materials can be confusing and time-consuming for the regulated community. For these reasons, the Agency requests comment on whether the Subtitle C Site Identification Form (EPA Form 8700–12) or the comparable state form should be used to provide the information required in this supplemental proposal. This form is used to enter data into the RCRAInfo data management system managed by the states and EPA. To implement use of this form for the notification requirements proposed today, we would revise the form to include a section for materials covered by this exclusion, with spaces for the appropriate data elements.

In addition, we are considering including additional information in the notification in order to measure the impact of the proposed rulemaking. More data would assist EPA in targeting future resources and activities to further increase recycling and to report to the public the impacts of the proposed rulemaking. The additional data elements for which we are requesting comment are discussed in section XIV of today's notice.

We note that this exclusion applies only to hazardous secondary materials generated and reclaimed within the United States or its territories, because most of our information about recycling comes from these geographical areas. We do not have sufficient information about most recycling activities outside of the United States to decide whether discard is likely or unlikely. However, we are soliciting comment on whether

EPA should promulgate a conditional exclusion for exported material otherwise meeting the criteria for this exclusion.

C. Enforcement

Under today's proposal, hazardous secondary materials generated and reclaimed within the United States under the control of the generator would be excluded from RCRA Subtitle C regulation, but would be subject to certain restrictions, principally speculative accumulation. Persons that handle these hazardous secondary materials would be responsible for maintaining the exclusion by ensuring that these restrictions are met. If the hazardous secondary materials were not managed pursuant to these restrictions, they would not be excluded. They would then be considered solid and hazardous wastes if they were listed or they exhibited a hazardous waste characteristic for Subtitle C purposes from the time they were generated. Persons operating under the exclusion would also be required to notify EPA or the authorized state.

Persons taking advantage of today's proposed exclusion that fail to meet the requirements may be subject to enforcement action and the materials could be considered hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA section 3008(a) for all violations of the hazardous waste requirements occurring from the time they are generated through the time they are ultimately disposed or reclaimed. The Agency believes that this approach provides generators with an incentive to handle (or in the case of tolling or other contractual arrangements, ensure that their contractors handle) the hazardous secondary materials pursuant to the requirements. It also encourages each person to take appropriate steps to ensure that such materials are safely handled and legitimately recycled by others in the management chain. If there is a release of the hazardous secondary materials into the environment, they are considered discarded and subject to all applicable hazardous waste regulations.

X. Conditional Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation: Proposed 40 CFR 261.2(c)(3), 261.4(a)(24), 261.4(a)(25)

EPA is today proposing an exclusion from the definition of solid waste for hazardous secondary materials that are generated and subsequently transferred to another company or person for the purpose of reclamation, provided that certain conditions are met. Recycling that conforms to these conditions would not involve discard and therefore the recyclable materials would not be regulated as solid waste. Such excluded hazardous secondary materials would also need to be recycled legitimately, as determined according to the provisions of 40 CFR 261.2(g), which also are being proposed today, and could not be speculatively accumulated, as defined in 40 CFR 261.1(c)(8).

The conditions that EPA is proposing today are based on our understanding of how successful third-party recycling currently operates (and, conversely, how unsuccessful recycling practices can result in recyclable hazardous secondary materials being discarded), and are supported by the information included in the recycling studies that are described in section VIII of this preamble. For example, the study of current good recycling practices indicates that many generators examine the recycler's technical capabilities, business viability, environmental track record, and other relevant questions before sending hazardous secondary materials for recycling. These recycler audits, which can be thought of as a form of environmental ''due diligence,'' are in essence a precaution to minimize the prospect of incurring CERCLA liability in the event that the recycling, or lack thereof, results in discard of the material. The fact that these companies are willing to incur the expense of auditing recyclers as a business practice is of itself a marketplace affirmation that sending hazardous secondary materials to other companies for recycling involves some degree of risk. Although these risks may be small when the recycler is a well established, successful enterprise with a good record of environmental stewardship, it also is apparent that not all recyclers fit this profile, as evidenced in the study of environmental problems associated with hazardous secondary material recycling. Thus, we believe that there is sufficient reason for the Agency to place certain conditions on this proposed exclusion for the generator to determine that the material is not discarded, particularly since we expect that this rulemaking, if implemented, could encourage some number of companies that may be unfamiliar with recycling to enter the hazardous secondary material recycling business.

A. What Is the Intent of Today's Proposed Conditional Exclusion?

In proposing this conditional exclusion, EPA's objectives are to encourage recycling of hazardous secondary materials, and reduce unnecessary regulatory compliance costs to industry, while maintaining protection of human health and the environment. We believe that this proposed conditional exclusion is a workable, common sense approach to meeting these objectives, is well supported by the record for this rulemaking, including the recent recycling studies that EPA has conducted, and in important ways reflects current good industry practices that are used by certain generators for recycling of hazardous secondary materials.

B. Scope and Applicability

The conditional exclusion for transferred materials would potentially apply to materials that are currently regulated as hazardous wastes because their recycling involves reclamation—specifically, spent materials, and listed sludges and listed by-products.

This is the same universe of materials that would have potentially been eligible for the exclusion proposed in October, 2003, except that that proposed exclusion would have applied only to these types of hazardous secondary materials that were recycled within the ''same industry.'' It would not be available for recycled materials that are regulated as hazardous wastes for other reasons, such as ''inherently waste-like materials,'' materials that are ''used in a manner constituting disposal,'' or ''materials burned for energy recovery.''

The exclusion proposed today also would not address materials that are currently excluded from the definition of solid waste according to other, existing provisions of 40 CFR part 261. For example, the wood preserving exclusion in 40 CFR 261.4(a)(9) includes conditions for managing materials on drip pads. Today's proposed exclusion, if finalized, would not supersede or otherwise affect this conditional exclusion; such hazardous secondary materials would need to continue being managed in accordance with that existing exclusion.

Today's proposed exclusion specifies three restrictions, in addition to conditions for both generators and the reclaimers to whom excluded materials would be transferred. One restriction is that materials that are speculatively accumulated would not be eligible for the exclusion. Restrictions on speculative accumulation (see 40 CFR 261.1(c)(8)) have been an important element of the RCRA recycling regulations since they were promulgated on January 4, 1985. According to this regulatory provision, a hazardous secondary material is accumulated speculatively if the person accumulating it cannot show that the material is

potentially recyclable; further, the person accumulating the hazardous secondary material must show that during a calendar year (beginning January 1) the amount of such material that is recycled, or transferred to a different site for recycling, must equal at least 75% by weight or volume of the amount of that material at the beginning of the period. This provision already applies to hazardous secondary materials that are not otherwise considered to be wastes when recycled, such as materials used as ingredients or commercial product substitutes, materials that are recycled in a closed-loop production process, or unlisted sludges and byproducts being reclaimed.

A second restriction or pre-condition specified in the proposed exclusion is that excluded hazardous secondary materials would need to be transferred directly from the generator to the reclaimer, and not be handled by anyone else other than a transporter. Thus, a generator who wished to maintain the excluded status of his hazardous secondary materials would not be able to ship those materials to a ''middleman,'' such as a broker. This restriction is consistent with a premise underlying this proposed exclusion—that is, in order to ensure that unregulated materials will not be discarded, generators should have a reasonable understanding of who will be reclaiming the materials and how they will be managed and reclaimed, and a reasonable assurance that the recycling practice is safe and legitimate (see the following discussion of the proposed condition for ''reasonable efforts''). A generator who ships materials to a middleman such as a broker typically does not know who will ultimately manage and reclaim them, or how they will be reclaimed. Thus, we believe that this restriction helps ensure that materials that become unregulated under the terms of this conditional exclusion will not be discarded by the generator. The Agency requests comment on this aspect of the proposed exclusion.

The Agency recognizes that, in some cases, recycling of an excluded hazardous secondary material may involve more than one reclamation step. For example, a recyclable hazardous secondary material such as an electroplating waste might have a relatively high moisture content, and a somewhat variable chemical composition. Such materials might thus need to be dried and blended to a suitable, consistent specification before they are amenable to a ''final'' reclamation process (e.g., metals smelting). In this example, the two different reclamation processes might be conducted by different companies and/or at different facilities. The Agency sees no reason to discourage this kind of recycling, and we are thus proposing that today's transfer-based exclusion would be available for materials that are recycled by means of one or more reclamation processes. Note, however, that the condition for generators to make ''reasonable efforts'' under the terms of this exclusion would apply in the same way, regardless of how many reclamation steps were involved with recycling of an excluded material. In other words, if the excluded hazardous secondary material were reclaimed by more than one facility or company, the generator of such material would need to make ''reasonable efforts'' to examine each facility or company in order to ensure that the hazardous secondary materials will be safely and legitimately recycled. We believe that this is a consistent application of the idea of requiring ''reasonable efforts'' as a condition of this proposed exclusion; where recycling of a hazardous secondary material involves more than one reclamation step at more than one facility, generators should nevertheless be well informed as to how the materials will be reclaimed, and by whom, throughout the recycling process.

The third specified pre-condition is that, for all hazardous secondary materials that would be excluded under 40 CFR 261.4(a)(24), generators and reclaimers that are currently subject to the hazardous waste regulations would need to submit a one-time notice to EPA or the authorized state. The notice would need to identify the name, address, and EPA ID number (if applicable) of the generator or reclaimer, the name and phone number of a contact person, the type of hazardous secondary material that would be managed according to the exclusion, and when the hazardous secondary materials would begin to be managed in accordance with the exclusion. A revised notice would be required to be submitted in the event of a change to the name, address, or EPA ID number of the generator or reclaimer or a change in the type of material recycled.

The intent of this proposed notification requirement is to provide basic information to regulatory agencies about who would be managing hazardous secondary materials under the exclusion, and the types of materials that would be recycled. We believe our authority to request such information is inherent in our authority to determine whether a material is discarded, and we consider this to be the minimum information needed to enable credible evaluation of the status of a material under section 3007 of RCRA. We also note after EPA promulgates regulations listing a material as a hazardous waste or identifying it by its characteristics, section 3010 of RCRA requires generators of such materials to submit a notification to EPA within 90 days. Since the changes proposed today could substantially affect this universe of facilities in the Subtitle C system, we believe the notifications are appropriate and useful.

The Agency requests comment on alternative notification requirements for this exclusion. One such alternative would be to require that more detailed information be provided in the notice, such as identification of the reclamation facility to which it will be shipped, how it will be stored at the generator's facility, and/or a detailed characterization of the hazardous secondary material and of the recycling process.

Another option being considered with regard to notification would be a requirement that it be signed by an authorized representative. In addition, we are considering the option of requiring persons using this exclusion to submit periodic (e.g., annual) reports detailing their recycling activities, to provide information on the types of volumes of hazardous secondary materials recycled, to whom the materials were sent for reclamation, the types of products that were produced from the reclamation processes, or other relevant information. We are also considering (and soliciting comment on) the option of requiring the information to be submitted in a particular format, or submitted electronically, and whether, in lieu of sending it to the implementing agency, it should be maintained at the facility.

EPA notes that the information discussed above can be difficult for regulatory authorities to retrieve and use if it is not placed into a data management system. Similarly, using different notification procedures and data management systems for different regulated materials can be confusing and time-consuming for the regulated community. For these reasons, the Agency requests comment on whether the Subtitle C Site Identification Form (EPA Form 8700–12) or the comparable state form should be used to provide the information required in this supplemental proposal. This form is used to enter data into the RCRAInfo data management system managed by the states and EPA. To implement use of this form for the notification

requirements proposed today, we would revise the form to include a section for materials covered by this exclusion, with spaces for the appropriate data elements.

C. Conditions

Today's proposed conditional exclusion for transferred materials specifies conditions for generators, as well as the reclaimers to whom generators transfer their hazardous secondary materials.

1. Conditions for Generators

In addition to the three pre-conditions described above, EPA is proposing that generators who wish to avail themselves of the exclusion for transferred materials must satisfy two basic conditions: record keeping, which includes export notification, and ''reasonable efforts,'' which in effect would require the generator to make an assessment of the reclaimer so as to ensure that the hazardous secondary materials he or she generates will be recycled legitimately and would allow the Agency to determine that the materials are not discarded.

Recordkeeping. In order to allow for adequate oversight of generators who manage hazardous secondary materials in accordance with this exclusion, we are proposing that such generators maintain for a period of three years certain records that document shipments (i.e., transfers) of excluded hazardous secondary materials to reclamation facilities. Specifically, the generator would need to maintain, for each shipment of excluded material, documentation of when the shipment occurred, who the transporter was, the name and address of the destination reclamation facility, and the type and quantity of the hazardous secondary material in the shipment. We are not proposing to prescribe any specific template for these records, or require that they be maintained in a particular format (e.g., paper vs. electronic records).

It is our understanding, supported by the information in the study of current good recycling practices, that generators who are concerned about potential environmental liability maintain these types of records as a routine business matter. Thus, we expect that this record-keeping condition will impose a minimal additional paperwork burden for those facilities. We also believe that this recordkeeping condition will help to clarify what ''appropriate documentation'' the generator would need to provide in the event of some type of RCRA enforcement action (see 40 CFR 261.2(f)). This proposed condition is also very similar to the recordkeeping condition that currently applies to excluded hazardous secondary materials used to make zinc fertilizer (see 40 CFR 261.4(a)(20)(ii)(D)). We are also requesting comment on whether to require the generator to maintain a copy of a confirmation of the receipt of the hazardous secondary material by the reclaimer. Based on our conversations with commercial recycling facilities, they routinely issue receipt confirmations or ''recycling certificates'' as a way of helping the generator verify that the hazardous secondary material reached its intended destination. The Agency solicits comment on this proposed condition for recordkeeping, including whether retention of confirmation of receipt is a normal business practice.

We considered additional record keeping conditions for generators who would operate under this proposed exclusion, but are not proposing them today, primarily because we are committed to limiting such conditions to those we believe are essential to allowing proper oversight of hazardous secondary materials that are managed outside of the existing RCRA hazardous waste regulatory system. Examples of such additional conditions would include more thorough characterization of the materials that are transferred for reclamation, the types of units in which they were accumulated at the generating facility, how they were transported (e.g., by truck), whether or not the hazardous secondary materials were transported as a DOT hazardous material, the date the hazardous secondary materials were generated, the quantity of hazardous secondary materials generated, and other similar conditions. We request comment on whether such additional record keeping conditions or others not mentioned here are warranted for generators who would manage materials under this proposed exclusion.

Similarly, under today's supplemental proposal, exporters of hazardous secondary materials that are excluded under 40 CFR 261.4(a)(24) would be required to notify the receiving country through EPA and obtain consent from that country before shipment of the hazardous secondary materials could take place (see 40 CFR 261.4(a)(25)). This requirement would serve as a notification to the receiving country so that it can ensure that the hazardous secondary materials are recycled rather than disposed. As an additional benefit, the receiving country has the opportunity to consent or not based on its analysis of whether the recycling facility can properly recycle the hazardous secondary materials and manage process residuals in an environmentally sound manner within its borders. EPA believes that sections 2002, 3002, 3007, and 3017 of RCRA provide authority to impose this condition because such notice and consent help determine that the materials are not discarded.

Under today's supplemental proposal, hazardous secondary materials that are exported from the United States and recycled at a reclamation facility located in a foreign country are not solid wastes, provided that the exporter complies with the requirements of 40 CFR 261.4(a)(24)(i)–(iv) and notifies EPA and obtains a subsequent written consent forwarded by EPA from the receiving country. The provisions that we are proposing today in 40 CFR 261.4(a)(25) require exporters to notify EPA of an intended export 60 days before the initial shipment is intended to be shipped off-site. The notification may cover export activities extending over a 12 month or shorter period. The notification must include contact information about the exporter and the recycler, including any alternate recycler. The notification must include a description of the manner in which the hazardous secondary materials will be recycled. It must also include the frequency and rate at which they will be exported, the period of time over which they will be exported, the means of transport, the estimated total quantity of hazardous secondary materials to be exported, and information about transit countries through which such materials will pass. Notifications must be sent to EPA's Office of Enforcement and Compliance Assurance, which will notify the receiving country and any transit countries. When the receiving country consents in writing to the receipt of the hazardous secondary materials, EPA will forward the written consent to the exporter. The exporter may proceed with shipment only after it has received a copy of the written consent from EPA. If the receiving country does not consent to receipt of the hazardous secondary materials or withdraws a prior consent, EPA will notify the exporter in writing. EPA also will notify the exporter of any responses from transit countries. Exporters must keep copies of notifications and consents for a period of three years following receipt of the consent. These procedures are similar to those required for exports of hazardous waste under 40 CFR Subpart E, except for the use of the hazardous waste manifest.

Reasonable Efforts. Today's supplemental proposal would require generators to make ''reasonable efforts'' to ensure that their materials are safely

and legitimately recycled, before shipping or otherwise transferring them to a reclamation facility. In effect, this would require the generator to perform a type of ''environmental due diligence'' of the reclaimer in advance of transferring the hazardous secondary materials. We believe that today's proposed condition for reasonable efforts reflects, and would perhaps reinforce, the methods, such as audits, that many generators of hazardous secondary materials now use to maintain their commitment to sound environmental stewardship, and to minimize their potential regulatory and liability exposures.

Some generators, particularly those who generate relatively large volumes of hazardous secondary materials, audit recyclers before shipping such materials to them. EPA's study of good practices for recycling quotes one large recycling and disposal vendor as stating that of its new customers, sixty percent of the large customers and thirty to fifty percent of the smaller customers now perform audits on them. Under current practices, such audits can involve a site visit to the recycling facility, and an examination of the company's finances, technical capability, environmental compliance record, and housekeeping practices. (**Note:** Audits that are currently conducted may or may not cover all of these areas.) According to those interviewed as part of our recycling study, auditing a recycler typically costs the generator from two to five thousand dollars, and in some cases more, depending on how thorough the audit is, and whether it is conducted by the generator's own personnel, or by an outside consultant. The study also identified at least one organization which conducts audits at several hundred recycling and other waste handling facilities per year. This organization audits overseas facilities, as well as domestic recyclers, and re-audits facilities on a more or less ongoing basis. Membership in this and similar organizations, by spreading the expense of conducting audits among a number of companies, gives a generator a means of reducing the cost of this type of ''environmental due diligence'' even further. Such auditing ''consortiums'' also reduce costs for the facilities that are audited, since fewer audits need to be conducted by individual generators. Note, however, that third-party auditors do not generally draw any conclusions based on their audits or provide a ''certification'' with respect to reclaimer operations, so the generator would still be expected to decide if the reclaimer is acceptable.

Today's proposed condition that addresses ''reasonable efforts'' is intended to reflect and capture in a regulatory context how many generators currently inquire and make decisions about whom they should do business with, and how they manage their potential liability and regulatory non-compliance risks.

Currently, under 40 CFR 262, a generator must make a hazardous waste determination and thus, already has an obligation to determine whether the waste is subject to regulation. EPA believes that to make a parallel determination that hazardous secondary materials are not solid wastes because they are destined for reclamation and are not discarded, the generator must make a reasonable effort to ensure that the reclaimer intends to legitimately recycle the material pursuant to 40 CFR 261.2(g) and not discard it, and that the reclaimer will manage the material in a manner that is protective of human health and the environment.

EPA is also proposing that the generator can use any credible evidence available in making his reasonable efforts, including information gathered by the generator, provided by the reclaimer, and/or provided by a third party, in lieu of personally performing an environmental audit. (In fact, in some cases, the generator may not be an expert in different aspects of recycling, and reliable third-party information or judgment would play an important part in the generator's conclusion.) For example, the generator might hire an independent auditor to review the operations of a recycler. Also, the generator might rely on third-party certifying bodies to provide a reasonable level of confidence that a recycler would safely manage his materials. Trade associations might make available to their members information on specific facilities that could be used to determine that the facility is safely and legitimately recycling the hazardous secondary material. Likewise, a parent corporation might perform an environmental audit of a recycler, and the audit could then be used by several of the company's facilities. In fact, EPA believes that many reputable third party auditors, and trade associations that might make available to their members information on specific facilities, already assemble the types of information that would be needed for a generator to determine, based on credible evidence, that the hazardous secondary material is being legitimately recycled. EPA would encourage this type of pooling of information in order to reduce the burden and take advantage of specialized technical expertise.

This proposed provision requiring reasonable efforts by generators would only apply to generators who send hazardous secondary materials to recyclers that are not operating under RCRA Part B permits or interim status standards. RCRA permitted facilities and interim status facilities are already subject to stringent design and operating standards, must demonstrate financial assurance, are subject to corrective action requirements in the event of environmental problems, and are typically given more thorough oversight than facilities without RCRA Part B permits. Thus, the Agency believes that permitted and interim status recycling facilities provide generators with environmental assurances that would ensure the hazardous secondary materials sent to such a facility are not discarded. Not requiring reasonable efforts for generators who ship hazardous secondary materials to RCRA permitted or interim status recycling facilities would likely be of particular benefit to relatively smaller volume generators who may not have the resources required to undertake ''reasonable efforts.''

EPA requests comment on whether to require generators to maintain at the generating facility documentation showing the reasonable efforts made before transferring the hazardous secondary materials to the reclamation facility. Such records would presumably include copies of audit reports, and/or other relevant information that was used as the basis for the generator's determination that the reclamation facilities to which the hazardous secondary materials were sent would legitimately recycle the hazardous secondary material in a protective manner. Requiring specific documentation would help EPA or the authorized state to determine whether the generator did make reasonable efforts to ensure that his hazardous secondary material was not discarded.

In addition, EPA requests comment on whether, as part of the documentation, the generator should also be required to maintain at the generating facility a certification statement, signed and dated by an authorized representative of the generator company, that for each reclamation facility to which the generator transferred excluded hazardous secondary materials, that the generator made reasonable efforts that the hazardous secondary material was legitimately recycled. Such certification statement could, for example, be worded as follows:

''I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name of reclamation facility], reasonable efforts were made to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.''

Today's proposed condition for reasonable efforts is in effect a general standard; we are not proposing specific questions that generators would need to assess in satisfying this condition of the exclusion. However, we acknowledge that specifying in more explicit terms the questions that should be examined in making such reasonable efforts could provide more certainty to generators, as well as overseeing agencies. On the other hand, more explicit provisions for defining reasonable efforts in this context could also limit a generator's flexibility. The Agency requests comment on whether more specific provisions to define reasonable efforts for the purpose of this exclusion should be specified in the final rule.

If EPA were to specify in more explicit terms how generators should perform reasonable efforts with respect to this regulatory exclusion, one approach could be to identify specific questions that generators would need to address in satisfying this condition. Such questions would be focused on ensuring that the hazardous secondary material will not be discarded. The following are examples of possible questions that EPA could specify in the final regulatory condition for determining reasonable efforts, with an explanation of how each question could potentially assist in determining that the hazardous secondary material is not discarded. EPA then outlines two options for how to determine ''reasonable efforts;'' the first option would use the broader list of questions (A through F) and the second option would use a subset of questions (A and F) that some believe have a more bright-line nature. EPA requests comment on whether any or all of these questions should be included in the regulation (including the advantages and disadvantages of the various questions, as well as of the two options outlined below), and if there are other questions that should be also be considered.

(A) Has the reclaimer notified the appropriate authorities pursuant to § 261.4(a)(24)(iii) and does he have financial assurance as required under § 261.4(a)(24)(v)(D)?

(B) Does the reclamation facility have the equipment and trained personnel to safely recycle the hazardous secondary material?

(C) Are there any unresolved significant violations of environmental regulations at the reclamation facility, or any formal enforcement actions taken against the facility in the previous three years for violations of environmental regulations? If yes, then the generator must have credible evidence that the reclaimer will manage the materials safely.

(D) Does the material being recycled provide a useful component that will be reused in the product of the recycling process or aid in the recycling process itself?

(E) Is the product (or intermediate) of recycling at the reclamation facility a generally traded commodity meeting applicable specifications? If not, is there other available information, such as sales records or long-term contracts, demonstrating that there is a reliable market for the product (or intermediate)? If not, then the generator must have credible evidence that the recycling at the reclamation facility will produce a valuable product or intermediate.

(F) Does the reclamation facility have the permits required (if any) to manage the residuals (if any) generated from reclamation of the excluded hazardous secondary material? If not, does the reclaimer have a contract with an appropriately permitted facility to dispose of the residuals (if any) generated from the reclamation of the excluded hazardous secondary material? If not, then the generator must have credible evidence that the residuals generated from the recycling of the excluded secondary hazardous material will be managed in a manner that is protective of human health and the environment.

The first possible question (A) focuses on whether the recycler has met two of the requirements he must fulfill before accepting excluded hazardous secondary materials for reclamation: notification of the appropriate regulatory authority that he plans to reclaim excluded hazardous secondary material (see Section X.B of today's proposal), and establishment of financial assurance to cover the costs of managing any hazardous secondary materials that remain if the facility closes (see Section X.C.2 of today's proposal). If a recycler were found to have failed to meet these requirements then he will have also failed to show a good faith effort towards demonstrating that he intends to recycle the material and not discard it, and will manage the material in a manner that is not protective of human health and the environment.

The second possible question (B) focuses on the technical capability of the recycler, the most basic of requirements for ensuring safe recycling of hazardous secondary material. If a reclamation facility were found to not have adequate equipment or trained personnel, it raises serious questions as to whether the facility would be engaged in safe recycling.

The third set of possible questions (C) focuses on the compliance history of the recycler. Although compliance data are an imperfect tool for determining whether a recycler would safely manage the hazardous secondary material, EPA believes that they are a reasonable starting point. Facility-specific enforcement data on unresolved alleged significant violations and on formal enforcement actions (by both EPA and states) and specific case information for the formal enforcement actions are readily available on EPA's public Web site at *http://www.epa.gov/echo/*. While the presence of a violation does not automatically mean that the facility would not recycle the hazardous secondary material safely, it would raise questions and would likely require additional information from the facility. If the generator provides reasonable documentation that the enforcement data are unrelated to the facility's commitment to manage the hazardous secondary material safely or that the violation has been corrected and the facility is back in compliance, then that would satisfy this aspect of the reasonable efforts determination.

The fourth possible question (D) focuses on the usefulness of the secondary material to the recycling process. EPA's study of the potential effect of market forces on the recycling of hazardous secondary materials shows that there is a particular incentive for materials to be recycled when it can be done at a lower cost than disposing of the material. In some cases, however, a hazardous secondary material with little value can be put into a ''recycling'' process, but not add anything of value either to the end product or to the process itself. In such cases, the hazardous secondary material is effectively being discarded rather than recycled. A material being legitimately recycled can contribute value to the process in two ways. The recycled material can contain a constituent that is being reused and which also appears in the final product. Alternatively, the material being recycled can aid in the process itself, such as by replacing a raw material that would otherwise be needed. For example, a hazardous

secondary material may act as an important catalyst or a carrier in a process, but not end up in the final product. To ensure that its hazardous secondary material is being properly recycled, a generator would need to ensure that his material contributes to the process in one of these ways.

The fifth set of possible questions (E) focuses on the products of recycling. According to EPA's study of the potential effect of market forces on the management of recyclable hazardous secondary materials, there is a relationship between the value of the product from recycling and the likelihood of successful recycling. Products with little or no value can result in recyclable materials being over-accumulated and mismanaged. Mismanagement of recyclable materials was a major cause of environmental damage in forty percent of the cases that EPA has studied. To provide assurance that the products created from the hazardous secondary materials are in fact valuable, the generator would need to determine if the products are general commodities that meet applicable standards, or that there is a reliable market based on sales records or long-term contracts.

For most recycled products, this determination would be straightforward and the product specifications are well known. Metals reclamation and solvents, for example, results in the production of valuable products that are readily traded on the open market. Other products, however, may be unique or recycled in a different manner and may require a closer look to determine if they meet minimum standards. For example, in one of the damage cases, the reclamation facility used spent plastic blast media to make certain construction materials, which are a generally traded commodity with rigorous standards. However, in this case, the ''recycling'' process resulted in cinder blocks that would crumble on contact, and concrete slabs that would not support the weight of a person. In some cases, there may be no formal standard for a product, but a commonsense informal standard would still apply, particularly in regards to toxic constituents. For example, in another of the damage cases, children's play sand was made from foundry sands highly contaminated with lead, which, in this situation would not meet such a commonsense standard. There are also other instances in the damage cases of recyclers marketing their product as appropriate for ''fill'' despite high levels of toxic constituents. In one case, a battery recycler distributed material from old battery casings to a community to be used as fill and driveway paving material, resulting in elevated levels of lead at 96 of the 109 properties. In order to determine whether a reclamation facility is legitimately recycling, the generator will need to check to make sure that the recycling results in a valuable product or intermediate.

Although a typical audit of a recycling facility would include an examination of the facility's finances, EPA does not have information on whether this financial evaluation would include an investigation as to whether the recycling process results in a valuable product. EPA requests comment on how including such a question might affect the scope of a typical audit.

The sixth set of possible questions (F) focuses on another major cause of environmental problems from hazardous secondary material recycling: the management of the residuals. Roughly one-third of the damage cases that EPA documented were caused by mismanagement of the residuals from recycling. Because the residuals from recycling can contain the hazardous constituents that originated with the hazardous secondary materials, it is important that the generator understands how those residuals will be disposed. These residuals may or may not be regulated hazardous wastes, but in either case, the generator would need to determine that they are managed in units that have the necessary permits (either solid waste permits or hazardous waste permits) or otherwise comply with applicable environmental standards (whether federal or state), such that the material is being managed in a manner that is protective of human health and the environment.

In drafting these possible questions to establish reasonable efforts, we have attempted to write them in as an objective a manner as possible, but we recognize that answering these questions still requires a certain amount of judgment. We understand that generators might prefer more definitive criteria. Therefore, we ask for suggestions on how the possible reasonable efforts questions (if they are included in the regulation) could be more objective, yet provide the necessary information, or any other information that should be required for making a reasonable efforts determination.

In particular, as noted at the beginning of this discussion, EPA requests comment on the alternative option of focusing ''reasonable efforts'' only on questions A and F above. This second of the two options would limit the generator's reasonable efforts requirement to determining whether the reclaimer has notified EPA or the authorized state that he is engaged in recycling excluded hazardous secondary material; whether the recycler complies with the financial requirements of this part; and whether the reclaimer has obtained the appropriate permits for managing residuals onsite or, alternatively, ships the material offsite under a contract with an appropriately permitted facility. These requirements would assure the generator that the reclaimer's operations are known to the regulatory authority and therefore can be inspected for compliance, that residuals would be properly managed (thus addressing the second most common environmental problem in the recycling case studies EPA has analyzed), and that financial assurance would cover the cost of facility closure and other potential environmental liabilities. While this list would not be as comprehensive, this option of focusing on a set of criteria that some believe is of a more bright-line nature could make it easier for the generator to determine whether the criteria have been met and thereby make, in good faith, a certification that would demonstrate ''reasonable efforts.''

In addition, EPA requests comment on how difficult it would be for a generator to address and certify in good faith the responses to questions B through E. In this regard, EPA requests comment on whether generators already possess, or would be able to acquire through reasonable efforts, the information and ability necessary to evaluate the relevant aspects of the recycling industry, especially in situations where the generator does not work in that industry or otherwise have a reason to be familiar with it. For example, under question (B), to what extent do generators already posses, or would be able to acquire readily, the information and ability needed to evaluate the adequacy of ''the equipment and trained personnel'' in a different industry than the one in which the generator operates? Similarly, under question (E), to what extent do generators already possess, or would be able to acquire readily, the required knowledge of markets (in which they might not participate) for purposes of determining whether something constitutes a ''valuable product or intermediate''?

EPA also requests comment on whether, if the final regulation does include specific questions for the generator to consider when making reasonable efforts, (1) should all generators be required to answer those questions and document their responses to each of them—that is, this

documentation would be a condition of the exclusion, or (2) should generators have the option of choosing to answer and document their response to these sets of questions or not. Under the latter approach, if a generator chooses to meet his burden of an objectively reasonable belief that his materials would not be discarded and would be managed in a manner that is protective of human health and the environment by answering these sets of questions, then the generator would have met his obligation under the regulations. Alternatively, the generator under the latter approach could meet his burden of proof based on other considerations, but without any assurance that a court, if the Agency were to undertake an enforcement action, would not later decide that the information he relied on did not support an objectively reasonable belief that his materials would not be discarded or would be managed in a manner that is protective of human health and the environment. However, under both approaches, if a generator meets the burden of proof that his decision to send his materials to a reclaimer was based on an objectively reasonable belief that the hazardous secondary materials would not be discarded and would be managed in a manner that is protective of human health and the environment, then the Agency would consider that the generator met his obligation under the regulations.

Note that codifying ''reasonable efforts'' standards that the generator would certify have been met would have the effect of placing on the generator the responsibility of assessing the recycler and ensuring that the hazardous secondary materials would not be discarded. EPA is seeking comment on this aspect of the proposal. Further, the Agency seeks comment on whether any or all of the questions are appropriate for the generator to answer in making reasonable efforts to ensure that the reclaimer intends to legitimately recycle the material and will not discard it pursuant to the criteria in 261.2(g), and that the reclaimer will manage the material in a manner that is protective of human health and the environment.

Of course, regardless of the type of information/questions EPA may include in the final rule, if any, the generator could choose to seek additional information or ask additional questions, and as shown in EPA's study of good recycling practices, many generators already do so. EPA anticipates generators may seek additional information in determining that their hazardous secondary materials will not be discarded due to concerns about CERCLA liability (which is unaffected by today's proposal, see Section XIII.D. of today's proposal).

EPA also requests comment on the relationship between the reasonable efforts questions and legitimacy (discussed in more detail in section XI of today's preamble). Two of the questions identified above, questions D and E, are related to the two factors that EPA is proposing today to be the ''core'' considerations for determining whether a recycling operation is legitimate, rather than sham recycling (i.e., whether the hazardous secondary material makes a useful contribution, and whether the recycling process results in a valuable product). EPA believes that it is appropriate to include these concepts in ''reasonable efforts,'' thus allowing the generator to make only one determination before sending hazardous secondary material for recycling. In other words, if these reasonable efforts questions are codified in the regulations, EPA is proposing that by satisfying reasonable efforts, the generator would have also satisfied the obligation to determine his hazardous secondary material would be legitimately recycled per proposed 40 CFR 261.2(g). However, because EPA is also requesting comment on recordkeeping and certification requirements related to reasonable efforts, incorporating questions D and E could alter the implementation of the legitimacy determination for materials excluded under this provision. EPA requests comment on whether to keep the legitimacy determination an independent requirement for generators who would claim today's proposed exclusion and not directly link it to ''reasonable efforts.''

Finally, EPA also solicits comment on whether the frequency of periodic updates of the ''reasonable efforts'' should be identified in the regulations, or whether that question should be left to individual situations applying an objectively reasonable belief standard. Information on industry standards for facility audits of off-site activities, including how frequently they are conducted, would be especially helpful.

Storage conditions. As with the proposed exclusion for hazardous secondary materials reclaimed under the control of the generator, if the generator manages the hazardous secondary material in a land-based unit under the transfer-based exclusion, the material must be contained. For further discussion of how to determine if a material in a land-based unit is contained, see section IX of today's preamble.

However, the Agency is also considering several other conditions for generators under this exclusion. One option would be a condition addressing storage of accumulated recyclable hazardous secondary materials by the generator prior to shipping them to a reclamation facility. For example, we are proposing today a condition that specifies a general performance standard for storage of excluded hazardous secondary materials at reclamation facilities. Arguably, the same or a similar standard could be required for generators who take advantage of the exclusion. The Agency requests comment as to whether a storage condition (beyond the requirement that material in land-based units be contained) should be imposed on generators as part of this exclusion, and if so, what type of condition(s) it should be.

2. Conditions for Reclaimers

EPA is proposing that reclaimers of conditionally excluded materials will have to satisfy four general conditions, which pertain to record keeping, storage of recyclable hazardous secondary materials, management of the residuals from reclamation processes, and financial assurance.

Recordkeeping. Today's supplemental proposal would require reclaimers who operate under this conditional exclusion for transferred materials to maintain certain records, similar to the records we are proposing to require for generators. Specifically, such reclaimers would need to maintain for at least three years records of each shipment of materials received at the reclamation facility that were excluded from regulation under the terms of this exclusion. Such records would need to document the name and address of the generator of the hazardous secondary materials, the name of the transporter and the date such materials were received, and the type and quantity of hazardous secondary materials received. The Agency believes that this information is the minimum needed to enable effective oversight of recycling activities that would no longer be subject to the existing hazardous waste regulations.

In addition to these proposed record keeping provisions, the Agency is considering additional records that would more thoroughly document excluded recycling activities by reclaimers. Examples of such additional records would include more thorough characterization of the hazardous secondary materials that are received for reclamation, the types of units in which they were stored at the reclamation

facility, how they were transported (e.g., by truck), whether or not the hazardous secondary material was transported as a DOT hazardous material, and other similar conditions. We request comment on whether such additional record keeping conditions are warranted for reclaimers.

Storage of Recyclable Hazardous Secondary Materials. We are proposing today a general performance standard for storage of excluded hazardous secondary materials at reclamation facilities that operate under this proposed exclusion. Specifically, the hazardous secondary materials must be managed in a manner that is at least as protective as that employed for analogous raw materials. An ''analogous raw material'' is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material. A raw material that has significantly different physical or chemical properties would not be considered analogous even if it serves the same function. For example, a metal-bearing ore might serve the same function as a metal-bearing air pollution control dust, but because the physical properties of the dust would make it more susceptible to wind dispersal, the two would not be considered analogous. Similarly, a hazardous secondary material with high levels of toxic volatile chemicals would not be considered analogous to a raw material without these volatile chemicals. Where there is no analogous raw material, or if the hazardous secondary material is managed in a land-based unit, the material must be contained. For example, in the case of the metal-bearing air pollution control dust, dust suppression measures would likely be needed to contain the hazardous secondary materials. For the hazardous secondary material with high levels of toxic volatile chemicals, a closed tank or container would probably be needed to contain the volatile chemicals. For further discussion of how to determine if a material is contained, see section IX of today's preamble.

Storage conditions for reclamation facilities that operate under today's proposed exclusion would allow the Agency to determine that the recyclable materials are not discarded. The great majority of damages documented in the study of recent recycling-related damage incidents occurred at commercial reclamation facilities, and mismanagement of hazardous secondary materials was found to be a cause of environmental problems in 35% of the incidents. Accordingly, EPA believes that this proposed condition for storage, or some similar condition, is necessary and appropriate for reclamation facilities that take advantage of this exclusion, and will establish an expectation for the owner/operators of such facilities; i.e., that they must manage hazardous secondary materials in at least as protective a manner as they would an analogous raw material, and in such a way that materials would not be released into the environment.

The Agency considered a number of alternatives to this proposed storage condition, including specifying a much more rigorous set of conditions equivalent to current Subtitle C regulatory requirements for storage (see, for example, the requirements for tanks and containers, which are specified in subparts I and J of 40 CFR Part 264), or to a similar, but less stringent set of storage conditions (e.g., requiring the hazardous secondary material to be stored in an engineered unit). However, we do not believe that an elaborate set of conditions for storage are necessary for the purpose of this exclusion. For one thing, we are proposing today that generators who wish to take advantage of this exclusion must make ''reasonable efforts'' to evaluate the reclamation facilities they ship materials to, to ensure that the hazardous secondary materials will be legitimately and safely recycled. In making such reasonable efforts, we expect that generators will make an assessment of the reclamation facilities' material storage practices and equipment. Thus, we believe generators will themselves evaluate the storage and handling practices of hazardous secondary materials at the reclamation facilities they do business with. We request comment on whether or not the condition should be written in more specific terms, that is, in a way that would provide greater clarity with regard to how storage units should be designed and operated.

Management of recycling residuals. We are today proposing a condition pertaining to management of residuals that are generated from reclamation of hazardous secondary materials excluded from regulation under this proposal. The proposed condition specifies that ''any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or themselves are listed hazardous wastes, they are hazardous wastes (if discarded) and must be managed according to the applicable requirements of 40 CFR parts 260 through 272.''

The purpose of this condition is primarily to clarify the regulatory status of these waste materials, and to emphasize in explicit terms that recycling residuals must be managed properly. The study of recent (i.e., post-CERCLA, post-RCRA) recycling-related environmental problems revealed that mismanagement of residuals was the cause of such problems in one third of the incidents that were documented. Some common examples of these mismanaged residuals were acids and casings from processing of lead-acid batteries, solvents and other liquids generated from cleaning drums at drum reconditioning facilities, and PCBs and other oils generated from disassembled transformers. In many of these damage incidents, the residuals were simply disposed in on-site landfills or piles, with little apparent regard for the environmental consequences of such mismanagement, or possible CERCLA liabilities associated with cleanup of these releases.

One issue that the Agency considered with respect to this proposed condition was the regulatory status of wastes generated from the reclamation of hazardous secondary materials that would be listed hazardous wastes if they were not recycled. One argument could be that these residuals should be regulated as listed hazardous wastes, since they were derived from materials that were physically and chemically identical to listed hazardous wastes, and could contain hazardous constituents that might pose significant threats to human health and the environment if the residuals were mismanaged. A different argument would be that such a regulatory construct is unwarranted, since the recycled hazardous secondary materials are not wastes, provided they meet the conditions of the exclusion, and therefore the ''derived from'' concept as articulated in § 261.3(c)(2) should not be applied to these wastes. Further, such waste residuals from reclamation processes often do not resemble the hazardous secondary materials that were reclaimed, and thus, the argument goes, it should not be assumed that they would always need to be managed as hazardous wastes.

The Agency does not believe it is necessary to apply the ''derived-from'' principle to the residuals generated from the reclamation of excluded hazardous secondary materials. If the residuals exhibited a hazardous characteristic, or they themselves were a listed hazardous waste, they would be considered hazardous wastes, and would have to be managed accordingly. If they did not exhibit a hazardous characteristic, or were not themselves a

listed hazardous waste, they would need to be managed in accordance with applicable state or federal requirements for non-hazardous wastes. Thus, they would be subject to the same regulatory system that applies to wastes that are not hazardous wastes. The Agency does not see a compelling reason to establish as part of this rulemaking a different regulatory system based on the ''derived-from'' principle for reclamation residuals. We solicit comment on this aspect of today's supplemental proposal.

Financial Assurance. EPA is proposing today the condition that owner/operators of reclamation facilities that would operate under the terms of this exclusion for transferred materials demonstrate financial assurance, in accordance with the current requirements of Subpart H of 40 CFR Part 265. Under Part 265 Subpart H, owners and operators must demonstrate that resources will be available to pay for closure, and post-closure care at their facilities. They also must meet liability coverage requirements for sudden and accidental occurrences at their facilities. The requirements found in Subpart H of 40 CFR 265 also outline how owners and operators should determine cost estimates, provide the acceptable mechanisms for demonstrating financial assurance, and set the minimum amounts of liability coverage required.

We believe that requiring financial assurance for these reclamation facilities is necessary for the Agency to determine that the materials managed at these facilities are not discarded, and is supported by the findings of the recycling studies we conducted as part of this rulemaking effort.

For example, the study of current good recycling practices indicated that one of the main reasons that generators audit recyclers is to evaluate their financial health and resources to respond to accidents or other problems that could cause adverse environmental or human health consequences. This is primarily because of the joint-and-several liability provisions of CERCLA, under which a generator can become a ''responsible party'' obligated to help pay for remediation expenses if (in this example) a recycler to whom he sent recyclable hazardous secondary materials were to create contamination problems, but lacked the resources to pay for their cleanup. Because American manufacturers have considerable experience with these types of CERCLA liability issues, evaluating the financial health of the reclamation facility before shipping recyclable materials to them has become a standard business precaution for many generators. Today's proposed condition for financial assurance thus can be seen as a regulatory precaution against the same concern, ensuring that the reclamation facility owner/operators who would operate under the terms of this proposed exclusion are financially sound.

The need for some type of financial assurance for recyclers in this context also is supported by the study of recycling-related environmental problems. The study indicates that business failure is a primary causative factor associated with these damage incidents. For example, of the 208 damage incidents that were documented, at least 138 of the recyclers are no longer in business. While there may not be a clear cause-and-effect relationship in all of these cases, we believe that this clearly suggests a correlation between the financial health of recycling companies and the probability that their recycling activities will result in some form of environmental damage. In our view, this further supports the need for some type of financial assurance condition for this exclusion.

As proposed, reclaimers of excluded hazardous secondary materials would need to have financial assurance in accordance with the applicable financial assurance requirements for hazardous waste treatment storage and disposal facilities (cited above). We believe that these financial assurance requirements are appropriate for reclamation facilities that would be managing excluded hazardous secondary materials, since such management will typically involve some type of storage, and reclamation, which is defined as ''treatment'' under the existing RCRA regulations. If a reclamation facility were to manage excluded materials in land-based units (e.g., piles), it would be subject to the additional Subpart H financial assurance requirements for land disposal facilities.

The Agency currently has underway a review of the Subpart H financial assurance regulations now in effect for hazardous waste treatment, storage and disposal facilities. The Agency does not intend to address general issues related to the financial assurance mechanisms as a part of today's rulemaking, since these issues are being addressed in the broader review. However, in the context of this rulemaking, the Agency is interested in receiving comments as to whether or not the existing Subpart H requirements need to be modified in some way specifically for reclamation facility owner/operators that would be affected by today's proposed exclusion. EPA also solicits comment on whether we should adopt the financial assurance requirements that were promulgated as part of the standardized permit rule (see 70 FR 53419, September 8, 2005), which are EPA's most recently issued RCRA financial assurance requirements.

We are also interested in options that would involve tailoring the costing requirements associated with Subpart H requirements for today's rulemaking. For example, the Subpart H financial obligations are tied in large part to the estimated future cost of closing the hazardous waste facility. Closure costs can be difficult to estimate, or subject to disagreement, and failure to close might not be the problem at a given facility. For example, closure cost estimates might not address the kind of releases identified in the recycling study. Thus, a simpler alternative might be to set a standard, fixed amount of financial assurance that would need to be demonstrated. For example, EPA's study of environmental problems associated with hazardous material recycling was able to identify actual or estimated cleanup costs associated with 89 of the damage cases that were documented. Of these cases, 71 (80%) involved cleanup costs of $5 million or less, while 81 cases (91%) cost $10 million or less. It should be noted that there are important uncertainties associated with these cost data, as explained in our study report. With these uncertainties in mind, these findings might be used as the basis for identifying a specific, minimum amount of financial assurance that reclamation facility owner/operators would need to demonstrate. Such funds would thus be available for any environmental damage associated with the reclamation operations at such facilities.

This type of approach to establishing financial assurance requirements for reclamation facilities would be less flexible than the current regulations, but it would have the virtue of simplicity and transparency. Similarly, the regulatory language of individual financial assurance mechanisms might need to be modified slightly, to make it clear that funds would be available for environmental damages beyond closure. The Agency solicits comment on such alternative approaches to financial assurance requirements for reclamation facilities that would operate under today's proposed exclusion.

Finally, the Agency anticipates that, when and if today's proposed exclusion for transferred materials is promulgated and becomes effective, there are likely to be some generators of recyclable hazardous wastes that will choose not to use the exclusion, and thus will continue to manage their wastes under the current hazardous waste regulatory

system. These generators may nevertheless wish to ship their hazardous waste to a reclamation facility that is operating under this exclusion. In such situations, it is possible that questions could arise as to the regulatory status of the hazardous waste materials that are sent to such reclamation facilities. Today's proposed exclusion includes a provision (§ 261.4(a)(24)(vi)) that is intended to clarify that the reclamation facilities may still claim the exclusion in these types of situations. The Agency requests comment on this provision.

D. Enforcement

Under today's proposal, hazardous secondary materials transferred for the purpose of reclamation would be excluded from RCRA subtitle C regulation, but would be subject to certain conditions and restrictions. If a generator fails to meet any of the above-described conditions or restrictions on the management of hazardous secondary materials that are applicable to the generator, then the materials would be considered discarded by the generator and would be subject to RCRA subtitle C regulations from the point at which the material was used and could not be reused without reclamation. If a reclaimer were to fail to meet any of the above-described pre-conditions or restrictions on the management of hazardous secondary materials that are applicable to the reclaimer, then the materials would be considered discarded by the reclaimer and would be subject to RCRA subtitle C regulation from the point at which the reclaimer failed to meet a condition or restriction, thereby discarding the material.

Please note that the failure of the reclaimer to meet conditions or restrictions does not mean the material was considered waste when handled by the generator, as long as the generator can adequately demonstrate that he has met his obligations, including the obligation under proposed 40 CFR 261.4(a)(24)(iv)(A) to make reasonable efforts to ensure that the material will be recycled legitimately and otherwise managed in a manner that is protective of human health and the environment. A generator who met his reasonable efforts obligations could in good faith ship his excluded materials to a reclamation facility where, due to circumstances beyond his control, they were released and caused environmental problems at that facility. In such situations, and where the generator's decision to ship to that reclaimer is based on an objectively reasonable belief that the hazardous secondary materials would be recycled legitimately and otherwise managed in a manner consistent with this regulation, the generator would not have violated the terms of the exclusion.

XI. Legitimacy: Proposed 40 CFR 261.2(g)

A. What Is the Purpose of Distinguishing Legitimate Recycling From Sham Recycling?

Under the RCRA Subtitle C definition of solid waste, many existing hazardous secondary materials are not solid wastes and thus, not subject to RCRA's ''cradle to grave'' management system if they are recycled. The basic idea behind this construct is that recycling of such materials often closely resembles normal industrial manufacturing, rather than waste management. However, since there can be significant economic incentive to manage hazardous secondary materials outside the RCRA regulatory system, there is a clear potential for some handlers to claim that they are recycling, when in fact they are conducting waste treatment and/or disposal in the guise of recycling. To guard against this, EPA has long articulated the need to distinguish between ''legitimate'' (i.e., true) recycling and ''sham'' recycling, beginning with the preamble to the 1985 regulations that established the definition of solid waste (50 FR 638, January 4, 1985) and continuing with the 2003 proposed codification of criteria for identifying legitimate recycling.

On October 28, 2003 (68 FR 61581–61588), EPA extensively discussed our position on the relevance of legitimate recycling to hazardous secondary materials recycling in general and to the redefinition of solid waste specifically. We proposed to codify in the RCRA hazardous waste regulations four general criteria to be used in determining whether recycling of hazardous secondary materials is legitimate. In today's action, we are proposing two changes to the proposed legitimacy criteria and asking for public comment on those changes. The changes are (1) a restructuring of the proposed criteria, called factors in this proposal, to make two of them mandatory, while leaving the rest as factors to be considered, and (2) additional guidance on how the economics of the recycling activity should be considered in a legitimate recycling determination.

As we explained in the 2003 proposal, it is the Agency's longstanding policy that, for activities to qualify as recycling of hazardous secondary materials, they must be legitimate. This principle applies to both recycling of excluded hazardous secondary materials and recycling of regulated hazardous secondary materials. The definition of legitimate recycling is intended to apply to all recycling of hazardous secondary materials, including:

- Recyclable hazardous secondary materials that would be excluded from Subtitle C regulation as wastes under today's proposed exclusion from the definition of solid waste.
- Hazardous secondary materials that, because they are recycled, are excluded or exempted from Subtitle C regulation under other regulatory provisions (e.g., see the exclusions in 40 CFR 261.2(e) and 261.4).
- Recyclable hazardous wastes that are regulated under Subtitle C prior to recycling.

Apart from the definition of solid waste implications, the concept of legitimate recycling also is used to determine if a recycling unit is exempt from RCRA Subtitle C permitting (except for certain air emission standards) or a regulated waste treatment or disposal unit, subject to full RCRA Subtitle C permitting.

The concept of legitimate recycling is designed to be used in addition to and in concert with more specific criteria or requirements when they have been established in the regulations for specific recycling activities or recycled hazardous secondary materials. Affected parties should look to those regulatory provisions, in addition to the definition of legitimate recycling, to ensure compliance. For example, for a zinc micronutrient fertilizer manufacturer who uses hazardous secondary materials as a feedstock, the consideration of hazardous constituents in the final product would involve an analysis of whether the operation is legitimate recycling and an analysis of whether the fertilizer meets the contaminant limits specified in 40 CFR 261.4(a)(21).

By ensuring that use of hazardous secondary materials in an industrial process is legitimate recycling, the Agency seeks to ensure that when a facility claims that it is recycling, the hazardous secondary material is in fact being recycled and is contributing to a valuable product and is not being treated or disposed of in the guise of recycling.

B. Definition of Legitimate Recycling in the 2003 Proposal

In the 2003 proposed rule (68 FR 61581–61588), EPA proposed codifying specific regulatory provisions for determining when hazardous secondary materials are recycled legitimately. Previously, the criteria considered in

evaluating legitimate recycling have been discussed extensively in preambles to definition of solid waste rulemakings and, notably, in a 1989 memorandum that laid out a single list of criteria to be considered in evaluating legitimacy (the ''Lowrance Memo''; OSWER directive 9441.1989(19), dated April 26, 1989).

The 2003 proposal consolidated the criteria in that memorandum into four criteria. EPA was clear in its expectation that most, if not all, legitimate recycling would conform with all four of the criteria, but stated that the application of those criteria would require some subjective evaluation of the criteria in each specific situation to which they are being applied. In those cases where a legitimate recycling operation does not meet all four criteria, the structure of the definition of legitimacy was designed to be flexible enough to allow those situations to be deemed legitimate.

In general, the proposed regulatory language stated that legitimacy determinations must be made by considering whether:

- The hazardous secondary material to be recycled is managed as a valuable commodity;
- The hazardous secondary material provides a useful contribution to the recycling process or to a product of the recycling process;
- The recycling process yields a valuable product or intermediate;
- The product of the recycling process does not contain significant amounts of hazardous constituents that are not found in the analogous products or exhibit a hazardous characteristic not exhibited by the analogous product.

The full proposed regulatory text can be found in the proposed rule (68 FR 61596).

It is the Agency's opinion that the concept of legitimate recycling proposed in the October 2003 proposal and in today's supplemental proposal is not substantively different than our longstanding policy, as expressed in earlier preamble and guidance statements. As part of proposing regulatory provisions on the legitimacy of recycling, we are simply reorganizing, streamlining, and clarifying the existing legitimacy principles. We believe that the regulatory definition of legitimate recycling, when applied to specific recycling scenarios, will result in determinations that are consistent with the earlier policy. Therefore, we generally do not see the need for the regulated community or overseeing agencies to revisit previous determinations and expect any written determinations from these agencies to, in effect, be grandfathered. For a more detailed analysis on how the definition of legitimacy has evolved from earlier preamble and guidance statements, see the October 28, 2003 proposal (68 FR 61581–61588), where we provided a thorough explanation of how the proposed criteria related to existing guidance. The Agency does not intend to reiterate that analysis in today's supplemental proposed rule, but will explain below the changes we are proposing to make from the 2003 proposal.

The 2003 proposal did result in comments on the Agency's proposal to codify legitimacy and we are requesting further comment on this issue. The Agency believes that there are many benefits to codifying the legitimacy factors, as discussed in the 2003 proposal. Many commenters, particularly the state regulatory agencies, but some members of industry as well, agreed with EPA's rationale for codifying the legitimacy in part 261. However, some commenters urged EPA to retain the existing legitimacy guidance instead of codifying it in the regulations. These commenters stated that the existing guidance provides a more flexible way to assess whether an activity constitutes legitimate recycling and raised several concerns with the codification of legitimacy. The commenters expressed concern that codification could alter the application of legitimacy. Although EPA intends to preserve current interpretations of legitimacy, the commenters raised the concern that putting legitimacy in the regulations could eliminate the flexibility in the existing guidance for subjective evaluation and balancing of the factors when making a determination. EPA is requesting comment on this issue.

In addition, the commenters raised the concern that codification of legitimacy would place too much burden on the regulated entity to make a showing that it is engaged in legitimate recycling. The Agency believes that it has always been the responsibility of the regulated entity to ensure, and if requested, to show that its recycling is legitimate. EPA expects that regulated entities have evaluated and will continue to evaluate their recycling operations using these factors and will reach their conclusions about legitimacy without prior approval by an overseeing agency. However, EPA is requesting comment on whether codifying the factors in today's proposal would place increased burden on the regulated entity and, if so, what the reasons are for such increased burden. Finally, the concern has been expressed that codification would fix into place a specific formulation of EPA's legitimacy factors, and therefore would limit future evolution of them. Future changes to the factors could become more difficult if they have been codified. The Agency believes there are many benefits to codifying the legitimacy factors, as discussed in the 2003 proposal, but is requesting comment on this issue.

EPA is interested in comments about the benefits and drawbacks of codifying legitimacy. In particular, EPA solicits comments on current practices for assessing legitimacy, on any problems with current practices that may be alleviated by codifying the factors, and on alternative means of addressing any such problems.

C. Changes Proposed in This Action

1. New Structure of Legitimacy Factors

a. *Design of the new structure.* For the reasons discussed below, EPA is proposing a new structure for the definition of legitimate recycling. The proposed design of the definition has two basic parts. The first part is considered the core of legitimacy, which includes a requirement that the hazardous secondary material being recycled provides a useful contribution to the recycling process or to the product of the recycling process and a requirement that the product of the recycling process is valuable. These two factors are fundamental to the definition of legitimacy and, therefore, an industrial process that does not conform to them would be considered sham recycling (i.e., treatment or disposal in lieu of recycling).

The second part of the proposed structure for legitimacy is a list of two factors that must be considered, but not necessarily met, when a recycler is making a legitimacy determination. EPA believes that these factors are important in determining legitimacy, but has not proposed to make them mandatory because the Agency believes that there may be some situations in which a legitimate recycling process does not conform to one of these factors. Therefore, EPA is proposing that the management of the hazardous secondary material and the presence of hazardous constituents in the product of the recycling activity be factors that must be considered in the overall legitimacy determination, but not mandatory requirements that must be met as part of a definition of legitimacy. The full proposed regulatory text for the legitimacy portion of this supplemental proposal is found in 40 CFR 261.2(g).

b. *Why EPA is proposing this change.* In the 2003 proposed rule, the regulatory text for legitimacy was made

up of paragraph (g) of proposed section 261.2, which stated that hazardous secondary materials that are not legitimately recycled are discarded and, therefore, solid wastes. Paragraphs (1) through (4) then listed the four proposed legitimacy criteria after a statement that legitimacy determinations must be made by considering them. Proposed criteria 1 and 2 focused on the hazardous secondary material being recycled and criteria 3 and 4 focused on the product of the recycling process.

In the 2003 proposed rule, the application of the four criteria to a recycling process was proposed to require some evaluation and balancing. That is, although the Agency expected that most legitimate recycling practices would conform to all the pieces of legitimacy, it was aware that there would be some cases in which legitimate recycling may not conform to one or more of the criteria. As in the Lowrance Memo, the structure of legitimacy allowed circumstances in which certain criteria weighed more heavily than others in the final legitimacy determination.

Analysis of public comment on the 2003 proposal shows that there was general agreement from industry, states, and other commenters that recycling cannot be legitimate if the hazardous secondary material being recycled does not provide a useful contribution to the process or to the product and if the recycling process does not yield a product or intermediate that is valuable to someone. Certain commenters requested that EPA provide more information on how it defines the terms used in the regulation and there was some disagreement with the specifics laid out in the preamble. Some commenters, particularly several states, felt that all four criteria should be mandatory requirements. However, almost all commenters agreed that proposed criteria 2 and 3 should be met in order for recycling to be considered legitimate.

EPA agrees with the importance of criteria 2 and 3 and, for this proposal, has decided that these two concepts are, in fact, at the very core of what it means to recycle legitimately. Therefore, today's proposed regulatory language states in 40 CFR 261.2(g)(2) that ''Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product of the recycling process and the recycling process must produce a valuable product or intermediate.'' This statement is followed by paragraphs (i) and (ii) to give more details on how the Agency defines these critical concepts.

EPA has determined that the other criteria in the 2003 proposal, criterion 1 and criterion 4, are still important concepts in making legitimacy determinations, but should not be mandatory. Instead, today's proposed regulations state these two factors need to be considered in making a determination as to the overall legitimacy, which are found in 261.2(g)(3). In stating these factors need to be considered, EPA expects that anyone making a legitimacy determination will look carefully at how their hazardous secondary materials are managed as compared to analogous raw materials and at the hazardous constituents in their products.

However, these two factors would not be mandatory because EPA and commenters were able to identify situations in which a recycling scenario appears to be legitimate, but one of these factors was not met in the way EPA described because that factor is not applicable or relevant to the materials being recycled or to the particulars of the recycling process. For example, it is possible that a solid, powdery hazardous secondary material could be shipped to a recycling facility in flexible, woven ''supersack'' containers, where the supersacks are then stored at the facility in a well-designed, designated indoor containment area and then legitimately recycled. If, however, an analogous raw material (i.e., with similar physical and chemical characteristics) was typically received and stored at the same facility in sealed steel drums, one could conclude that the hazardous secondary material was not managed ''in a manner consistent with the analogous raw material.'' In this case, therefore, a strict finding could be made that this factor was not met, even though the differences in storage practices do not affect protectiveness. In evaluating the legitimacy of a recycling process in situations like this, EPA does not believe that such a strict finding should necessarily be the determining factor. We are proposing that this factor not be mandatory in making legitimacy determinations in order to allow flexibility for these types of situations.

For similar reasons, the Agency is also proposing that the factor which addresses ''toxics along for the ride'' be a consideration in making legitimacy determinations, rather than a mandatory requirement. One illustration as to why some flexibility may be needed in assessing this proposed factor could be a hypothetical situation in which a pharmaceutical manufacturer uses a ''virgin'' solvent (''Solvent X'') as a process ingredient, and generates a spent solvent that is identical to the virgin solvent, except that it has become contaminated with a relatively small amount of a different solvent (''Solvent Y''). Solvents X and Y are assumed to have essentially the same toxicity and solvent properties, and both chemicals would be considered ''hazardous constituents'' under RCRA for waste identification purposes. In this example, the spent material (i.e., the mixture of solvents ''X'' and ''Y'') is no longer useful to the generator in making pharmaceuticals. It would potentially be useful, however, to a manufacturer of oil-based paints, as a substitute for virgin Solvent X. If the spent material was used in this manner by the paint manufacturer, the resulting paint products could contain significant concentrations of a hazardous constituent (i.e., ''Solvent Y'') not found in analogous products made from virgin Solvent X. Thus, this recycling practice could be determined as not meeting today's proposed legitimacy factor that addresses ''toxics along for the ride.''

Given that the paint products made from spent (i.e., secondary) materials would essentially have the same solvent properties and potential environmental hazards as paint made from virgin solvents, it might be reasonable to determine that the overall recycling practice was legitimate. Again, because of situations like this, we believe that this factor is best expressed as a consideration in making legitimacy determinations, rather than as a mandatory requirement.

At the same time, it should be noted that ''toxics along for the ride'' is an important consideration when the toxic constituents affect either the performance of the product or cause adverse environmental or health effects. For example, elevated levels of lead in foundry sand would not be a problem when the sand is re-used in the foundry molds, but it has been a significant problem when the sand was sold as children's play sand.[4] In such a case, the high levels of lead would disqualify this use from being considered legitimate recycling.

Under this proposed structure, if a facility making a legitimacy determination decides that one of these

[4] One of the profiles in the docket for today's proposal shows that from 1997–1998, a horticultural nursery purchased approximately 375 tons of foundry sand which contained lead above the regulatory limits, that was then bagged and sold as play sand to approximately 40 different retailers. (U.S. EPA, An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials, Appendix 2).

two factors to be considered is, in fact, not applicable to the recycling process, we recommend that the facility document why the recycling process is legitimate, even though it may not meet one or more of the factors to be considered.

EPA believes that the new structure for the definition of legitimacy will clarify what the Agency believes are the most important elements of legitimacy and requests comment on this structure for making legitimacy determinations related to hazardous secondary material recycling.

2. Consideration of Economics in Legitimate Recycling

EPA also notes that the economics of the recycling activity may be relevant to legitimate recycling determinations. Consideration of economics has long been a part of the Agency's concept of legitimacy, as evident in the Lowrance Memo and earlier preamble text (50 FR 638, January 4, 1985 and 53 FR 522, January 8, 1988) [see also American Petroleum Institute v. EPA (''API II''), 216 F.3d 50, 57–58 (DC Cir. 2000)]. In addition, in our October 2003 proposal, EPA proposed that consideration of economics be part of the second legitimacy criterion (i.e., whether the hazardous secondary material provides a useful contribution). In their comments to the October 2003 proposal, states and some other stakeholders supported including a consideration of economics when making legitimacy determinations, although they also expressed a need for clarification of how economics should inform legitimacy determinations. Today's proposal, unlike the October 2003 proposal, does not codify specific regulatory language on economics, but offers further guidance and clarification on how economics may be considered in making legitimacy determinations. The Agency believes that we are clarifying how economics has traditionally been implemented via the Lowrance Memo guidance, and therefore, does not believe the consideration of economics as explained below impacts existing legitimacy determinations.[5]

Specifically, EPA believes that consideration of the economics of a recycling activity can be used to inform and help determine whether the recycling operation is legitimate. Positive economic factors would be a strong indication of legitimate recycling, whereas negative economic factors would be an indication that a further look at the recycling operation may be warranted in assessing its legitimacy. While not specifically addressed in the proposed regulations, consideration of economics could be a factor in informing whether the hazardous secondary material input provides a useful contribution and whether the product of the recycling operation is of value.

Consideration of the economics of a particular recycling operation can greatly assist in making legitimacy determinations. Appropriate information for this consideration could include an understanding of the major costs, revenues, and economic flows for a recycling operation. Information that may be useful could include (1) the amount paid or revenue generated by the recycler for recycling hazardous secondary materials; (2) the revenue generated from the sale of recycled products; (3) the future cost of processing existing inventories of hazardous secondary materials and (4) other costs and revenues associated with the recycling operation. The economics of the recycling transaction may be more of an issue when hazardous secondary materials are sent to a third-party recycler, although where the hazardous secondary material being recycled is under the control of the generator, the generator must still be able to show that the hazardous secondary material is, at a minimum, providing a useful contribution and producing a valuable product.

The basic economic flows can suggest whether the recycling operation will process inputs, including hazardous secondary materials, and produce products over a reasonable period of time, recognizing that there will be lean and slow times.[6] Thus, processing inputs that produce legitimate products is a threshold for legitimate recycling. A general accounting of the major costs, revenues, and economic flows for a recycling operation over a reasonable period of time[7] can provide information to consider whether recycling is likely to continue at a reasonable rate, compared to the rate at which inputs are received, or whether it is likely that significant amounts of unrecycled material are likely to be accumulated and then abandoned when the facility closes.[8] Any bona fide sources of revenues would be included in this consideration, such as payments by generators to recyclers for accepting hazardous secondary materials and subsidies supporting recycling. However, in order to have some level of confidence that beneficial products are or will be produced; we believe that at least some portion of the revenues should be from product sales (or savings due to avoided purchases of products if the hazardous secondary materials are used directly by the recycler), consistent with the hazardous secondary material being recycled to make a useful product.

Two examples illustrate this concept. A recycling operation that generates revenues from sales of recycled products that greatly exceed the costs of the operation is likely to quickly process the hazardous secondary materials it receives into useful products. A very different example is an operation that has, relative to its revenues, large inventories of unsold product and large future liabilities in terms of stocks of unprocessed hazardous secondary material. This operation would draw closer attention to determine whether it is engaged, in essence, in treatment and/or abandonment in the guise of recycling.

When the economics of a recycling operation is similar to that of manufacturing using raw materials, the Agency believes that such an operation is likely to be legitimate. That is, the recycler pays for hazardous secondary materials as a manufacturer would pay for raw materials, the recycler sells products from the recycling process as a manufacturer would sell products of manufacturing, and revenues equal or exceed costs. In this scenario, hazardous secondary materials are valuable (i.e., the recycler is willing to pay for them) and make a useful contribution to a valuable recycled product (otherwise the recycler would not be willing to pay for them). In addition, the sale of the products of recycling demonstrates their value.

However, we also recognize that the economics of many legitimate recycling operations that utilize hazardous secondary materials differs from the economics of more traditional manufacturing operations. An understanding of the economics of these

[5] Today's supplemental proposal would make the ''useful contribution'' factor a central, or mandatory, part of the definition of legitimacy (along with the ''valuable product'' factor). However, we do not believe that consideration of economics should also be considered a mandatory factor. Nevertheless, the economics of a recycling activity is a consideration because it can assist in informing the useful contribution and valuable product factors of the definition of legitimate recycling.

[6] As an example, metal prices fluctuate and at times are below the cost of processing. However, recovery of metals is usually legitimate recycling.

[7] Where the hazardous secondary material being reclaimed is under the control of the generator, the recycling operation is generally part of an overall manufacturing operation, which would be part of the evaluation.

[8] In general, overaccumulation of hazardous secondary materials is subject to the speculative accumulation provisions, as defined in 40 CFR 261.1(c) (8).

operations can be useful in evaluating the legitimacy of a recycling operation. For example, many recyclers are paid by generators to accept hazardous secondary materials. Generators may be willing to pay recyclers because they can save money if the recycling is less expensive than disposing of the hazardous secondary materials in landfills or incinerators. Another example is a scenario where recyclers receive subsidies which may be designed to develop recycling infrastructure and markets, remove problematic materials from disposal, or achieve other benefits of recycling. For example, the recycling of electronic materials can be legitimate even though the recycler is often subsidized for processing the material. Both of these examples involve situations that are different from manufacturing using raw materials, but as long as they are appropriately considered, an analysis of the economics of these operations can assist in determining the legitimacy of the recycling.

Any analysis of the economics of a recycling operation should recognize that a recycler may be able to charge generators and still be a legitimate recycling operation properly excluded from regulation. In short, because these hazardous secondary materials are hazardous wastes if disposed of, typically the generators' other alternative management option already carries a cost that is based on the existing market for hazardous waste transportation and disposal. Hence, unless there is strong competition in recycling markets or the hazardous secondary materials are extremely valuable, a recycler may be able to charge generators simply because alternative disposal options cost more. While the generator's objective may be finding the least cost alternative for getting rid of the hazardous secondary material, the recycling may well be a legitimate recycling operation.

Recognizing that such a dynamic exists can assist those making determinations in evaluating legitimacy of the recycling operation. For example, if a recycler is charging generators fees (or receiving subsidies from elsewhere) for taking hazardous secondary material and receives a far greater proportion of its revenue from acceptance fees than from the sale of its products, both the useful contribution and the valuable product factors may warrant further review, unless other information would indicate that such recycling is legitimate. Fees and subsidies could indicate that the economic situation allows the recycler to charge high fees, regardless of the contribution provided by the inputs, including hazardous secondary materials. In this situation, recyclers may also have an increased economic incentive to over-accumulate or overuse hazardous secondary materials, or to manage them less carefully than one might manage more valuable inputs. Additionally, if there is little competition in the recycling market, and/or if acceptance fees seem to be set largely to compete with the relative costs of alternative disposal options rather than to reflect the quality or usefulness of the input to the recycling operation, this may also suggest a closer look at ''useful contribution.''

A relatively low proportion of revenues coming from sales of recycled products compared to payments by generators may suggest the need for more consideration of the ''valuable product'' criterion. It is possible that it is appropriate for product sales revenues to be dwarfed by acceptance fee revenues because markets for the particular products are highly competitive or because high alternative disposal costs allow for high acceptance fees. However, relatively low sales revenues could also point to a review of product sales prices to see whether they are lower than other comparable products, products are being stockpiled rather than sold, or very little product is being produced relative to the amount of inputs to the recycling operation. These could be possible indicators that the recycled product may not be valuable and, thus, sham recycling may be occurring.

A consideration of the future cost of processing or alternatively managing existing inventories of hazardous secondary material inputs also can inform the legitimacy determination. When hazardous secondary materials make a significant useful contribution to the recycling activity, a recycler will have an economic incentive to process input materials relatively quickly or efficiently, rather than to maintain large inventories. While recyclers often need to acquire a sufficient amount of a hazardous secondary material to make it economically feasible to recycle, there should be little economic incentive to over-accumulate such materials that make a useful contribution. Overly large accumulations of input materials may indicate that the input materials are not providing a useful contribution or that the recycler is increasing its future costs of either processing or disposing of the material, and hence may be faced with an unsound recycling operation in the future. Again, it is important to weigh this factor against other considerations. For example, it is possible that the recycler has acquired a large stock of hazardous secondary material because the price was unusually low or perhaps the material is generated episodically and the recycler has few opportunities to collect it.

When recycling is conducted under the control of the generator, the recycler may not account formally for some of the costs and savings of the operation. Still, when deciding whether to undertake or continue the recycling operation or to utilize alternative outside recycling or disposal options, the recycler will evaluate basic economic factors as a part of doing business. Also, the recycler would be likely to account for the costs of virgin materials avoided by using hazardous secondary materials. Similarly, sales of recycled products under the control of the generator that are sold to an external market may be used to evaluate the valuable product criterion. Thus, the recycler should have available the basic information necessary to consider the economics of an on-site or internal recycling operation for purposes of making a legitimacy determination. We recognize, however, that an evaluation of the economic structure of a recycling operation under the control of the generator is likely to be less rigorous than that of a typical offsite commercial recycling operation.

We request comment on how the economics of the recycling activity should be considered in making overall legitimate recycling determinations consistent with prior legitimacy determinations under the Lowrance Memo. We are specifically interested in whether economics should simply be a consideration that informs legitimacy overall or whether the economics of recycling should be a separate factor, including regulatory language, to consider. In addition, we are interested in hearing from both the regulated community and the States about other ways in which consideration of economics can inform and support determinations of legitimate recycling for both on-site and offsite recycling.

XII. Petitions for Non-Waste Classification: Proposed 40 CFR 260.30(d), 260.30(e), 260.30(f), 260.34

A. What Is the Intent of This Provision?

The intent of the non-waste determination petition process is to provide petitioners with an administrative procedure for receiving a formal determination that their recycled hazardous secondary material is not discarded. This process would be available in addition to the solid waste exclusions proposed today. Once a non-

waste determination has been granted, the hazardous secondary material would not be subject to the restrictions and conditions that the exclusions discussed elsewhere in today's supplemental proposal would include (e.g., prohibition on speculative accumulation, or, for the transfer-based exclusion, recordkeeping, reasonable efforts, financial assurance, storage standard and export notice and consent).

The petition process would be voluntary. Facilities may choose to continue to self-implement any applicable waste exclusions and, for the vast majority of cases, where the regulatory status of the material is evident, self-implementation will still be the most appropriate approach. In addition, facilities may continue to contact EPA or the authorized state asking for informal assistance in making these types of waste determinations. However, for cases where there is ambiguity about whether a hazardous secondary material is a solid waste, the formal petition process will provide regulatory certainty for both the facility and the implementing Agency

EPA anticipates that most generators who recycle their hazardous secondary materials would use either the self-implementing exclusions proposed today or existing exclusions. We request comment on how frequently the non-waste determination process is likely to be used and how best to minimize the burden to the authorized states and to the regulated community.

The Agency is proposing three types of non-waste determinations: (1) For hazardous secondary materials recycled in a continuous industrial process, (2) for hazardous secondary materials indistinguishable in all relevant aspects from a product or intermediate, (3) for hazardous secondary materials that is recycled under the control of the generator, such as through contracts similar to the tolling arrangements proposed in section IX of today's preamble.

B. Non-Waste Determination for Hazardous Secondary Material Recycled in a Continuous Industrial Process

As discussed earlier in today's supplemental proposal, court decisions have made it clear that hazardous secondary material that is recycled in a continuous industrial process is not discarded and therefore, not a solid waste. The October 2003 proposed rule attempted to parse the language of some of those decisions in order to identify when material destined for recycling is clearly not a solid waste. As explained earlier, we are not finalizing that approach. Instead, the Agency has decided to link the rulemaking more explicitly to the concept of ''discard'' which underlie those decisions. EPA believes that today's supplemental proposal excludes from the definition of solid waste hazardous secondary materials recycled in a continuous industrial process by virtue of the determination that such materials that are legitimately recycled under the control of the generating facility and not speculatively accumulated are not discarded and therefore not solid waste.

However, production processes can vary widely from industry to industry. In the October 2003 proposal, we attempted to define ''recycled in a continuous industrial process'' using the NAICS codes. Based on the comments we received, we determined that identifying which hazardous secondary materials are recycled within a continuous industrial process presents difficulties as courts have, at least implicitly, acknowledged.[9] Even if EPA had more specific information on some hazardous secondary materials, it still would be impossible to know if the Agency has addressed every possibility. Thus to determine whether an individual hazardous secondary material is recycled in a continuous industrial process, and therefore not a solid waste, EPA may need to evaluate case-specific fact patterns, which is best done through a case-by-case procedure. We are titling this procedure a ''non-waste determination'' to acknowledge that this procedure constitutes an administrative process for formally recognizing that a specific hazardous secondary material is not a solid waste.

EPA is proposing four criteria for making this ''non-waste determination'' that a specific hazardous secondary material is reclaimed in a continuous industrial process. The first is the extent that the management of the hazardous secondary material is part of the continuous production process. At one end of the spectrum, if the material is handled in a manner identical to virgin feedstock, then it is fully integrated into the production process. At the other end of the spectrum, materials indisputably discarded prior to being reclaimed are not a part of the continuous primary production process. (''*AMC II*''), 907 F. 2d 1179 (DC Cir. 1990) (listed wastes managed in units that are part of wastewater treatment units are discarded materials (and solid wastes), especially where it is not clear that the industry actually reuses the materials). For cases that lie within the spectrum, the petitioner would need to provide sufficient information about the production process to demonstrate that the management of the hazardous secondary material is an integral part of the production process and is not waste treatment.

The second criterion for making this non-waste determination is the capacity of the production process to use the hazardous secondary material in a reasonable timeframe and ensure that it will not be abandoned (for example, based on past practices, market factors, the nature of the material, and any contractual arrangements). Abandonment of stockpiled recyclable hazardous secondary materials is one way that discard can occur at recycling operations and is one of the major causes of environmental problems. As indicated in the recycling studies, 69 of the 208 incidents of environmental damage involve abandonment of the hazardous secondary material as the primary cause of damage. For today's proposed exclusions for hazardous secondary materials recycled under the control of the generating facility and hazardous secondary materials transferred to another facility for recycling, EPA is proposing speculative accumulation (as defined in 40 CFR 261.1(a)(8)) as the method for determining when a material is unlikely to be recycled and therefore may end up being discarded via abandonment. For the non-waste determination, the petitioner would not necessarily need to demonstrate that the material would not be accumulated speculatively per 40 CFR 261.1(a)(8), but he must provide sufficient information about the material and the process to demonstrate that the

[9] *See,* for example the *ABR* decision, where the Court acknowledged that the term, ''discard,'' could be ''ambiguous as applied to some situations, but not as applied to others,'' and particularly cited the difficulty in examining the details of the many processes in the mineral processing industry. 208 F.3d at 1056. While the court overturned EPA's regulations for casting too wide a net over continuous industrial processes, it acknowledged that there are large number of processes, some of which may be continuous and some of which may not. Determining what is a continuous process in the mineral processing industry, according to the Court, would require examination of the details of the processes and does not lend itself, well, to broad abstraction. Specifically, the court stated: Some mineral processing secondary materials covered under the Phase IV Rule may not proceed directly to an ongoing recycling process and may be analogous to the sludge in AMC II. The parties have presented this aspect of the case in broad abstraction, providing little detail about the many processes throughout the industry that generate residual material of the sort EPA is attempting to regulate under RCRA, 208 F.3d at 1056.

In the case of today's supplemental proposal, which applies across industries, there are far larger and more diverse processes. While the Agency believes it is proposing a reasonable set of principles, they must still be applied to the details of the industrial processes in question.

hazardous secondary material will in fact be reclaimed in a reasonable timeframe and will not be abandoned. EPA is not proposing an explicit definition of ''reasonable timeframe'' because such a timeframe would vary according to the material and industry involved, and therefore determining this timeframe should be made on a case-specific basis. However, an applicant may still choose to use the speculative accumulation timeframe as a default if it wishes.

The third criterion for this non-waste determination is whether the hazardous constituents in the hazardous secondary material are recycled rather than released to the air, land or water at significantly higher concentrations from either a statistical or from a health and environmental risk perspective than would otherwise be released by the primary production process. To the extent that the hazardous constituents are a continuation of the original hazardous secondary material, their release to the environment is an indicator of discard. The Agency recognizes that normal production processes also result in a certain level of releases and, in evaluating this criteria, would not deny a petition if the increase in releases is not significantly different from either a statistical or risk perspective. However, when unacceptably high levels of the constituents that make the hazardous secondary material of regulatory concern are released to the environment rather than recycled, then that material (or at least the portion of the material that is of most concern) is not in fact being ''reused within an ongoing industrial process.''

The fourth and final criterion for this non-waste determination includes any other relevant factors that demonstrate the hazardous secondary material is not discarded. This ''catch-all'' criterion is intended to allow the applicant to provide any case-specific information it deems important in making the case that its material is not discarded and therefore not a solid waste.

EPA requests comment on these criteria, as well as any other criteria that may be relevant for making this non-waste determination.

C. Non-Waste Determination for Hazardous Secondary Material Indistinguishable in All Relevant Aspects From a Product or Intermediate

Although the courts have made clear that hazardous secondary materials recycled within a continuous industrial process are not discarded and therefore not solid waste, they have also said that hazardous secondary materials destined for recycling in another industry are not *automatically* discarded. In the *Safe Foods* case, the Court stated ''Nobody questions that virgin * * * feedstocks are products rather than wastes. Once one accepts that premise, it seems eminently reasonable to treat [recycled] materials that are indistinguishable in the relevant respects as products as well.'' 350 F.3d at 1269. In most cases, hazardous secondary materials that are indistinguishable from products are unambiguously excluded from solid waste regulation under 40 CFR 261.2(e). However, there may be some instances which would benefit from a non-waste determination similar to that proposed today for hazardous secondary materials reclaimed in a continuous industrial process. EPA is proposing four criteria for making a non-waste determination for hazardous secondary materials indistinguishable in all relevant aspects from a product or intermediate.

The first criterion for this non-waste determination is consideration of likely markets for the hazardous secondary material (for example, based on the current positive value of the material, stability of demand, and any contractual arrangements). This evaluation of market participation is a key element for determining whether companies view and handle these hazardous secondary materials like products rather than like negatively-valued wastes. EPA's report on how market incentives affect the management of hazardous secondary materials indicates that both high value and stable markets are strong incentives to refrain from over-accumulating recyclable materials, thus maximizing the likelihood that the hazardous secondary materials will be recycled and not abandoned.

The second criterion for this non-waste determination is the chemical and physical identity of the hazardous secondary material and whether it is comparable to commercial products or intermediates. This ''identity principle'' is a second key factor that the Court in *Safe Food* found useful in determining whether a material is indistinguishable from a product. It is important to note that the identity of a material can be ''comparable'' to a product without being identical. However, to qualify for a non-waste determination, any differences between the hazardous secondary material in question and commercial products or intermediates must be insignificant from either a statistical or from a health and environmental risk perspective.

The third criterion for this non-waste determination is whether the hazardous constituents in the hazardous secondary materials are recycled rather than released to the air, land or water at significantly higher concentrations from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process. The Agency believes that to the extent that the hazardous constituents are a continuation of the original hazardous secondary material, their release to the environment is a possible indicator of discard. The Agency recognizes that normal production processes also result in a certain level of releases and, in evaluating this criteria, would not deny a petition if the increase in releases is not significant from either a statistical or a health and environmental risk perspective. However, when high concentrations of the constituents that make the hazardous secondary material of regulatory concern are released to the environment rather than reclaimed, then that material (or at least the portion of the material that is of most concern) is not being handled as a commercial product or intermediate.

As with the non-waste determination for hazardous secondary materials reclaimed in a continuous industrial process, the fourth and final criterion for this non-waste determination includes any other relevant factors that demonstrate the material is not discarded. This ''catch-all'' criterion is intended to allow the applicant to provide any case-specific information it deems important in making the case that its material is not discarded.

EPA requests comment on these criteria, as well as any other criteria that may be relevant for making this non-waste determination.

D. Non-Waste Determination for Hazardous Secondary Material Reclaimed Under the Control of the Generator Via a Tolling Arrangement or Similar Contractual Arrangement

As discussed earlier in today's preamble, EPA is proposing that hazardous secondary materials recycled via a specific type of tolling (or contractual) arrangement are not discarded and therefore are not solid waste, and is requesting comment if other types of tolling arrangements would also not involve discard. Because the generator maintains control over the recycled hazardous secondary material and it is legitimately recycled, the hazardous secondary material would not be considered discarded. By maintaining control over, and potential liability for, the recycling process, the generator ensures that the materials are not discarded. See ABR 208 F.3d at 1051 (''Rather than throwing these materials [destined for recycling] away,

the producers saves them; rather than abandoning them, the producer reuses them.'').

However, the large variety of contractual arrangements may preclude EPA from identifying all possible arrangements that clearly do not involve discard. For this reason, the Agency also is proposing that generators may seek a non-waste determination for tolling or other contractual arrangements not covered by the proposed exclusion discussed in section IX of today's preamble.

The first criterion for this non-waste determination would be whether the generator retains ownership and responsibility via a contract or other mechanism for the hazardous secondary materials and the residuals that result from their recycling. Assumption of responsibility of both the hazardous secondary materials and the residuals that would result from their recycling is a key indication that the generator is not abandoning the hazardous constituents that would have caused the hazardous secondary materials to have been hazardous waste had they been discarded.

The second criterion for this non-waste determination is whether the hazardous constituents in the hazardous secondary materials are recycled rather than released to the air, land or water at significantly higher concentrations from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process. The Agency believes that to the extent that the hazardous constituents are a continuation of the original hazardous secondary material, their release to the environment is a possible indicator of discard. The Agency recognizes that normal production processes also result in a certain level of releases and, in evaluating this criteria, would not deny a petition if the increase in releases is not significant from either a statistical or a health and environmental risk perspective. However, when high concentrations of the constituents that make the hazardous secondary material of regulatory concern are released to the environment rather than reclaimed, then that material (or at least the portion of the material that is of most concern) is not being recycled under the control of the generator.

As with the other types of non-waste determinations, the final criterion for this non-waste determination includes any other relevant factors that demonstrate the material is not discarded. This ''catch-all'' criterion is intended to allow the applicant to provide any case-specific information it deems important in making the case that its material is not discarded.

EPA requests comment on these criteria, as well as any other criteria that may be relevant for making this non-waste determination.

E. Scope and Eligibility

As with any solid waste determination that involves recycling, hazardous secondary materials presented for a non-waste determination must be legitimately recycled. In other words, the hazardous secondary material must provide a useful contribution to the recycling process or to a product of the recycling process, and the recycling process must produce a valuable product or intermediate. For further discussion of legitimacy and the factors to be considered, see section XI of today's preamble.

In addition, non-waste determinations are limited to reclamation activities and would not apply to recycling of ''inherently waste-like'' materials (40 CFR 261.2(d)), recycling of materials that are ''used in a manner constituting disposal,'' or ''used to produce products that are applied to or placed on the land,'' (40 CFR 261.2(c)(1)) and ''burning of materials for energy recovery'' or ''used to produce a fuel or otherwise contained in fuels'' (40 CFR 261.2(c)(2)). Today's supplemental proposal is not intended to affect how these recycling practices are regulated. However, we request comment on whether such practices should be eligible for the case-specific non-waste determinations.

F. Petition Process

The petition process for the non-waste determination would be the same as that for the solid waste variances found in 40 CFR 260.31. In order to obtain a non-waste determination, a facility that manages a hazardous secondary material that would otherwise be regulated under 40 CFR 261 as either a solid waste, or as a conditionally excluded waste, must apply to the Administrator or the authorized state per the procedures described in 40 CFR 260.33. EPA proposes to amend section 260.33 to apply to non-waste determinations also. The application must address the relevant criteria (discussed in further detail above). The Administrator would evaluate the petition and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the facility is located. The Administrator would accept comment on the tentative decision for 30 days, and also may hold a public hearing. The Administrator would issue a final decision after receipt of comments and after the hearing (if any). If the application is denied, the facility may still pursue a solid waste variance or exclusion (for example, one of the solid waste variances under 40 CFR 260.31 or solid waste exclusions under 40 CFR 261.4). EPA also may choose to specify the Regional Administrator as the appropriate level of review for this process.

As discussed in more detail in section XV of today's supplemental proposal, under section 3006 of RCRA, EPA would authorize states to administer the non-waste determinations as part of their base RCRA program. Because states are not required to implement Federal requirements that are less stringent or narrower in scope than current requirements, authorized states are not required to adopt the non-waste determination process, and ordinarily the proposed provision could not go into effect in an authorized state until it does choose to adopt it. However, because the non-waste determination process is a formalization of determinations that states may already perform on an ad hoc basis, EPA is proposing to allow states that have not yet formally adopted the proposed regulation in 40 CFR 260.34 to participate in non-waste determinations if the following conditions are met: (1) The state determines that the hazardous secondary material meets the criteria in either paragraph (b), (c) or (d) of proposed section 40 CFR 260.34; (2) the state requests EPA to review its determination; and (3) EPA approves the state determination.

G. Enforcement

If a regulatory authority determines that a hazardous secondary material is not a solid waste via the proposed petition process, the material is not subject to Subtitle C hazardous waste regulations. However, as part of this process, the applicant has an obligation to submit, to the best of its ability, complete and accurate information. If the information in the application is found to be incomplete or inaccurate and, as a result, the hazardous secondary material does not meet the criteria for a non-waste determination, then the material may be subject to RCRA Subtitle C regulation and EPA or the authorized state could choose to bring an enforcement action under RCRA section 3008(a). Moreover, if the petitioner is found to have knowingly submitted false information, then it also may be subject to criminal penalties under RCRA section 3008(d).

A special situation occurs when a material meets all the criteria at the time the determination is made, but, as circumstances change, ceases to meet the criteria. In particular, proposed criteria 40 CFR 260.34(b)(2) and 40 CFR 260.34(c)(1) depend at least in part on market conditions, which can change over time. EPA requests comments on whether there should be as part of the petition process an obligation for the petitioner to inform the Agency when circumstances change, and whether there should be a formal mechanism for the Agency to revoke a determination if the change in circumstances results in the hazardous secondary material no longer meeting the criteria for a non-waste determination.

XIII. Effect of This Proposal on Other Programs

A. Other Exclusions

In the October 2003 proposal, EPA proposed a number of specific ''conforming changes'' to existing exclusions (68 FR 61578–61580). The purpose of these conforming changes was to simplify and clarify the regulations. EPA did not intend to make any substantive changes as to how currently excluded materials would need to be managed or regulated. However, comments to the proposed changes were overwhelming in favor of retaining the existing exclusions. These existing exclusions are familiar to both the States and the regulated community, and making wholesale adjustments appears to have had unintended consequences in many cases.

Thus in today's supplemental proposal, EPA is proposing to retain the existing exclusions (for example, the scrap metal exclusion in 40 CFR 261.4(a)(13)) exactly as written. However, we request comment on whether any specific regulatory exclusion would need revision in order to avoid confusion or contradictions. EPA also is proposing that hazardous secondary materials that are currently excluded with specific requirements or conditions should be required to continue to meet those requirements (e.g., the drip pad requirements for the wood preserving exclusion in 40 CFR 261.4(a) (9)). In addition, recycling of such materials at new facilities, or at existing facilities that are not currently operating under the terms of an existing exclusion, would also be subject to the existing applicable regulatory exclusion, rather than today's proposed exclusions.

We request comment on the option of allowing a regulated entity to choose which exclusion the person is subject to in those cases where more than one exclusion could apply and, if so, whether that entity should be required to document the choice made.

B. Permitted Facilities

Facilities that currently have RCRA permits or interim status, and are managing hazardous wastes that would become excluded under this rule, could be affected by today's supplemental proposal in a number of ways. Under one scenario, a facility that manages a variety of hazardous waste materials, including some hazardous secondary materials that would become excluded under this rule, would be affected only to the extent that certain units or processes at the facility would no longer be subject to hazardous waste regulations. A somewhat different scenario could involve a facility whose hazardous secondary materials would all become excluded from regulation when this rule takes effect (i.e., the facility is no longer a hazardous waste management facility).

For permitted facilities that would be managing hazardous secondary materials excluded under this rule in addition to regulated hazardous wastes, changes to the facility's permit would be necessary. These facilities would need to maintain their permits, but the units used solely to manage hazardous secondary materials would no longer be regulated solid waste management units subject to permit requirements. (Of course, to the extent that the exclusion were conditional, the owner/operator of the facility would need to comply with the applicable conditions to maintain the exclusion.) In such cases, the facility owner/operator could seek a permit modification from EPA or more typically the authorized state agency to remove the formerly subject unit(s) from the permit.

The Agency believes that owners and operators modifying their permits to remove units managing only wastes excluded by this rule should comply with the requirements of section 270.42(a) for Class 1 permit modifications, with prior Agency approval. Under this approach, owners and operators would be required to submit notification of the permit modification to the implementing agency, along with documentation demonstrating that the operations at the unit meet the conditions of the exclusion, and that the unit is used solely to manage excluded hazardous secondary materials. In addition, the owner or operator would be required to comply with the requirements of section 270.42(a)(ii) for public notification. Under section 270.42(a)(2), the permit modification would not become effective until the owner or operator received written approval by the implementing agency. The implementing agency would approve the permit modification so long as the owner or operator complied with the procedural requirements of section 270.42(a), that the operations met the conditions of the exclusion, and adequately demonstrated that the unit did not manage non-excluded hazardous wastes. EPA believes that Class 1 permit modifications with approval are appropriate in this case even though the proposal would establish a self-implementing exclusion, which does not require a regulatory agency's approval. In this case, the unit in question has been through a formal permit process, and the Agency believes it appropriate that the regulatory agency have the opportunity for a brief review before the permit conditions it imposed are removed. For example, the unit might be intimately tied into other waste management operations at the facility, or perhaps the regulatory agency imposed special provisions under the omnibus provision, which it would want to consider. EPA seeks comment on this approach.

A permitted facility that would no longer be considered a hazardous waste management facility under the exclusion (e.g., a facility managing only hazardous secondary materials that become excluded under today's supplemental proposal) would no longer need a hazardous waste operating permit nor need to comply with the existing hazardous waste regulations governing permitted facilities. (Again, to the extent that the exclusion is conditional, the owner/operator of the facility would need to comply with the applicable conditions to maintain the exclusion.) Owners or operators of such facilities could, therefore, apply to the overseeing agency to terminate the permit by modifying the permit term. The Agency believes that owners or operators seeking to terminate the facility's permit by modifying the permit term should comply with the requirements of section 270.42(a) for Class 1 modifications with prior Agency approval, as described above. To support a request for permit termination by modifying the permit term, the owner or operator would have to demonstrate that the operations meet the conditions of the exclusion, and that the facility does not manage non-excluded hazardous wastes. Further, as discussed below, the owner or operator would have to demonstrate that corrective action obligations at the facility have been addressed, or, where

corrective action obligations remain, that continuation of the permit is not necessary to assure that they will be addressed (e.g., where the facilities cleanup obligations will be addressed under an alternative federal or state enforcement mechanism, or other federal or state cleanup authority). The Agency seeks comment on this approach.

As was explained in the October 2003 proposal (68 FR 61580), where a permitted facility has not yet completed facility-wide corrective action, but manages only hazardous secondary materials that would become excluded under this proposed rule (see 40 CFR 264.101), the obligation to address facility-wide corrective action would remain in effect.

At some facilities, corrective action obligations will likely continue to be addressed through the corrective action provisions of the permit. In these cases, maintenance of the permit would ensure that facility-wide corrective action will be addressed. Thus, in these cases, the permit would not be terminated by modifying the permit term, but would be modified to remove the provisions that applied to the now-excluded hazardous secondary material. The facility's permit would, thereafter, only address corrective action.

In other cases, however, EPA or an authorized state may have available an alternative federal or state enforcement mechanism, or other federal or state cleanup authority, through which it could choose to address the facility's cleanup obligations, rather than continue to pursue corrective action under a permit. In these cases, where the alternate authority would ensure that facility-wide corrective action will be addressed, maintenance of the permit would not be necessary.

A facility that is operating under interim status would be affected by promulgation of today's supplemental proposal in much the same way as would a permitted facility, and the issue of corrective action would be addressed in a similar manner. At an interim status facility managing only hazardous secondary materials that become excluded under today's supplemental proposal, the Part 265 interim status standards that applied to the hazardous waste management units at the facility, as well as the general facility standards in Part 265, would no longer apply. At the same time, the owner or operator would retain responsibility for unaddressed corrective action obligations at the solid waste management units.

Owners and operators of permitted and interim status facilities with corrective action obligations should refer to the Agency's February 25, 2003 guidance entitled ''Final Guidance on Completion of Corrective Action Activities at RCRA Facilities,'' (68 FR 8757) for a detailed discussion of corrective action completion.

In addition to the above described issues relating to permits and corrective action, today's supplemental proposal also may have implications with regard to closure of hazardous waste storage units at affected facilities. In cases where hazardous waste storage units would only be managing excluded hazardous secondary material pursuant to today's supplemental proposal, the current regulations could be read as triggering the closure requirements for those units, since owners/operators of non-land-based hazardous waste units (e.g., tanks, containers, containment buildings) must begin closure within 90 days of receiving a unit's final volume of hazardous wastes. See 40 CFR 264.113(a) and 265.113(a).

In the October, 2003 proposal (68 FR 61580–61581), EPA expressed the view that requiring closure of units in these situations would serve little environmental purpose, since after closure the unit would be immediately reopened and used to store the same (now excluded) hazardous secondary material. In that notice, the Agency proposed that closure of storage units would not be required when the wastes in such units were excluded under the proposal.

In response to that proposal, several commenters stated that one of the main purposes of the RCRA subtitle C closure requirements is to identify and remediate any releases originating from the units. The Agency notes that releases from these units are discarded and solid and hazardous wastes, and agrees with commenter's concern that such releases should be addressed. The Agency does not agree, however, that the specific subtitle C closure requirements are most appropriate to address cleanup of releases from these units, if any have occurred. Rather, the Agency believes that a better approach would be to address potential releases from these units as part of corrective action for all releases at the facility. This approach would achieve the same environmental results, and would provide the owner or operator the option of integrating the cleanup more closely into the broader facility response.

When considering the issue of addressing releases from these units, the question arises about what happens to the funds that provide financial assurance for closure. The requirements in Part 264 and 265 Subpart H, which apply at these units prior to the exclusion taking effect, provide for release of financial assurance upon certification by the owner or operator that closure has been completed in accordance with the approved closure plan, and Agency verification of that certification (see 264.143(i) and 265.143(h)). Similar provisions at sections 264.145(i) and 265.145(h) provide for release of financial assurance for post-closure care.

Under the approach to closure discussed above, owners and operators of units that manage only wastes that would be excluded under this supplemental proposal would not be subject to closure requirements and, therefore, would not submit a certification of closure, and thus would not trigger release of financial assurance. As discussed in section X.C.2 of today's preamble, reclaimers who receive hazardous secondary materials that have been excluded under the proposed 40 CFR 261.4(a)(24) would still be required to meet Subpart H financial assurance requirements as a condition of the exclusion. In this case, the financial assurance provided for closure would satisfy that requirement (perhaps with some modification).

However, persons who recycle materials under the proposed exclusions for materials recycled under the control of the generator (40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23)) would not be required to meet Subpart H financial assurance requirements as a condition of the exclusion. The Agency believes that those owners and operators should be released from financial assurance requirements upon demonstrating that no releases from the unit remain to be addressed. In complex facilities, that demonstration might be difficult, or it might be inconsistent with broader corrective action strategy (for example, if historical releases from the unit were mingled with other general facility contamination). Where such a situation exists, the Agency believes that financial assurances obtained for closure and/or post-closure should be redirected to address the corrective action needs at the unit. (In general, however, EPA believes that these situations will be the exception rather than the rule, since the overwhelming majority of units in question would have upgraded to current subtitle C standards, e.g., secondary containment for tanks, etc.). The Agency requests comment on modifying the regulations to allow financial assurances obtained for closure and/or post-closure to be redirected to address the corrective action needs at units that manage only

wastes that would be excluded by this proposal.

C. Imports and Exports

The proposed exclusion for hazardous secondary materials recycled under the control of the generating facility is limited to recycling performed in the United States or its territories. However, the transfer-based recycling exclusion and non-waste determinations included in today's supplemental proposal do not place any geographic restrictions on movements of such hazardous secondary materials, provided they meet the description of the exclusion. It is therefore possible that in some cases excluded hazardous secondary materials could be generated in the United States or its territories and subsequently exported for reclamation to a facility in a foreign country. Under today's supplemental proposal, the exclusion would be effective while the hazardous secondary material is within the United States or its territories. However, such excluded hazardous secondary materials may be subject to regulation as hazardous wastes in the receiving country, even if they are excluded from the definition of solid waste domestically (i.e., under RCRA). If this is the case, the U.S. exporter of the hazardous secondary material will need to comply with any applicable requirements of the importing country. (For further discussion, see section X.C.1 of today's preamble regarding specific export/import conditions for hazardous secondary materials excluded under this proposal.)

D. Superfund

A primary purpose of today's supplemental proposal is to encourage the safe, beneficial recycling of hazardous secondary materials. In 1999, Congress enacted the Superfund Recycling Equity Act (SREA), explicitly defining those hazardous substance recycling activities that potentially may be exempted from liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA section 127. Today's supplemental proposal does not change the universe of recycling activities that could be exempted from CERCLA liability pursuant to CERCLA section 127. Today's supplemental proposal only changes the definition of solid waste for purposes of RCRA subtitle C requirements. The supplemental proposal also does not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

E. National Partnership for Environmental Priorities

If today's proposed changes to the RCRA definition of solid waste are promulgated, the Agency expects that affected companies will take advantage of this new regulatory framework by exploring new opportunities to recycle their hazardous secondary materials. We believe that these regulatory changes are consistent with EPA's efforts to encourage and promote sustainable methods and practices by manufacturers and other businesses. In this context, ''sustainability'' is defined as economic development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The National Partnership for Environmental Priorities (NPEP) is a voluntary program administered by EPA that fosters the establishment of a new corporate/federal partnership in which both work collaboratively towards voluntary reductions in the use of certain chemicals. Recycling is one means of achieving such reductions in chemical use. The NPEP can provide technical assistance and expertise to assist companies in successfully achieving these goals, while at the same time saving money or increasing production. NPEP members' successes are voluntarily reported to EPA, and members are publicly recognized and rewarded for their accomplishments. For further information on the NPEP program, visit the NPEP Web site at *Http://www.epa.gov/epaoswer/hazwaste/minimize/partnership.htm.*

XIV. Measurement of the Performance Outcomes of This Supplemental Proposal

A. Need for Performance Measurement

Since today's supplemental proposal, if finalized, would make important changes to the Agency's current RCRA regulatory framework for industrial recycling of hazardous secondary materials, and is designed to encourage industrial recycling of such materials, the Agency has a strong interest in being able to measure the performance outcomes that these regulatory changes may have on the regulated community. In general, it is important for the Agency to be able to quantify, monitor, and report to the public the actual performance outcomes of this supplemental proposal. In general, performance measurement of federal programs is expected of by Congress according to the 1993 Government Performance and Results Act (*http://www.whitehouse.gov/omb/mgmt-gpra*) and the 2005 Government Reorganization and Program Performance Improvement Act (*http://www.whitehouse.gov/omb/legislative/grppi_act_2005.pdf*), as well as by the 2002 President's Management Agenda (*http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf*), and by the Office of Management and Budget according to the annual Program Assessment Rating Tool (*http://www.whitehouse.gov/omb/part*) initiated in 2003. In particular, measurement of the performance outcomes for this supplemental proposal will enable EPA to evaluate the actual effectiveness with regard to encouraging industrial recycling, affecting future industrial recycling trends, and targeting possible future regulatory and non-regulatory initiatives directed at furthering safe and beneficial industrial recycling practices. As discussed elsewhere in today's preamble, we expect that the regulatory changes being proposed will have the effect of reducing regulatory disincentives to industrial recycling, thereby encouraging new recycling initiatives by the regulated community.

To measure performance outcomes, the Agency is interested in being able to measure the numbers of existing and new industrial facilities that actually take advantage of these regulatory changes, as well as the quantities and types of hazardous secondary materials that are affected, and the specific types of industries that are affected. We also are interested in measuring the extent to which industrial recycling that is affected by today's supplemental proposal occurs onsite or offsite, and the extent to which small quantity and large quantity hazardous waste generators (i.e., SQGs and LQGs) are able to take advantage of an exclusion. Such information on the actual outcomes of these regulatory changes could enable the Agency to measure, rather than estimate, the actual cost savings benefits to industries affected by the regulatory changes, as well as to measure environmental benefits (e.g., annual quantities of specific materials conserved, avoided raw material inputs, reduced pressure on landfill capacity, water and energy conserved).

B. Approaches to Performance Measurement

1. Use of the Proposed Notification Requirements

Today's supplemental proposal includes a requirement that facilities (both generators and recyclers) taking advantage of an exclusion provide regulatory authorities with certain basic items of information through a one-time

notification. This information would allow EPA to track the number of facilities and the types of hazardous secondary materials affected by the proposed rulemaking, but would not allow us to estimate the amount of material affected. We request comment on whether additional data elements could be added that would help inform EPA and the public about the effect of the proposed exclusions without imposing a significant additional burden on the regulated community.

2. Use of Existing EPA Data Systems

There are two existing data systems which may be of limited utility to EPA for measuring the performance outcomes of this supplemental proposal.

(a) RCRA Biennial Report. Under 40 CFR 262.41, large quantity hazardous waste generators and hazardous waste treatment, storage, recycling and disposal facilities (TSDRFs) are required to prepare and submit Biennial Reports to RCRA-authorized states on the types and quantities of hazardous wastes generated and managed during the reporting year (*http://www.epa.gov/epaoswer/hazwaste/data/biennialreport*). In the past, the Agency has used data from the Biennial Report (BR) for analytic purposes such as establishing baselines for estimating the potential economic impacts on industries and facilities potentially affected by RCRA rulemaking initiatives. While the BR has provided the Agency with considerable valuable data regarding the types and quantities of hazardous wastes that are generated, and where and how they are treated, stored or disposed, this system has a number of limitations, particularly with regard to: (i) How small quantity generators are not required to report to the BR and (ii) how generation and management of hazardous secondary materials that are not regulated as hazardous wastes are not covered in the BR. Under today's supplemental proposal, these limitations may be exacerbated, since current RCRA-regulated hazardous wastes subject to BR reporting will become excluded as recycled hazardous secondary materials. As a result, in the future we expect the BR will provide less data relevant to measuring hazardous secondary materials recycling trends, and thus will be inadequate for measuring the future outcomes and success of this supplemental proposal. Therefore, we request comment on modifying the BRS to require or continue to require that such information be submitted to EPA.

(b) Toxic Release Inventory. Compared to the BR, the Toxic Release Inventory (TRI) may provide greater utility for the purpose of measuring future performance outcomes of today's supplemental proposal, because the TRI is not limited to hazardous waste and not limited to LQGs, but includes annual reporting on industrial materials manufactured, imported, processed, otherwise used, transferred offsite, treated or disposed as waste, or recycled by certain industries. Consequently, by its design and relatively broader scope, the TRI (Form R; *http://www.epa.gov/tri*) contains limited information on RCRA hazardous wastes (as well as more information about other types of industrial materials such as secondary by-products) and it is probably more on-point for the Agency to attempt to use for measuring future outcomes of today's supplemental proposal.

In combination, both the BR and TRI data systems may provide a skeletal but complementary framework for measuring future performance outcomes.

3. Surveys

Another option, either as a stand-alone option or used in combination with the BR/TRI option above, could be to conduct a mail or phone survey of affected facilities. The main advantage of a survey would be the ability to collect data on targeted performance measures that would not be available through either the BR or TRI. Moreover, a survey mechanism could potentially serve a dual purpose as a form of communications outreach to industrial facilities that are not recycling or are unaware of today's supplemental proposal, which would assist EPA in better understanding why some generators are unable or unwilling to recycle their hazardous secondary materials. Such a survey could be voluntary or mandatory, and could involve a statistically-valid sample of industrial facilities, or could focus on particular industries or affected materials. It could be conducted as a one-time effort or periodically (e.g., once every four years) to capture recycling trends over time. To minimize burden, it could also be conducted electronically over the internet. It should be noted, however, that with some exceptions (e.g., surveys of fewer than 10 respondents), conducting a survey of this nature would need OMB approval in accordance with the provisions of the Paperwork Reduction Act.

4. Voluntary Partnerships With Affected Industries

Measuring the impact of today's supplemental proposal might also be done with the voluntary assistance of stakeholder industry and trade associations, many of which also may have a vested interest in assessing their success, or lack thereof. We are aware that some trade associations may maintain data on the recycling activities of their member companies; such associations might be willing to share some of that existing information with the Agency. Another option could be to partner with certain trade associations that may be willing on a voluntary basis to gather relevant information from their members.

5. NPEP Voluntary Program

As discussed in the preceding section of this preamble, EPA's National Partnership for Environmental Priorities (NPEP) is a voluntary program that encourages companies and federal facilities to reduce priority chemicals through waste minimization, reuse, recycling, and reclamation, and to report achievements in reductions. Companies that choose to change their materials management practices from disposal to recycling as a result of today's supplemental proposal could be eligible for membership in NPEP. Companies that join NPEP could identify voluntary goal(s) to initiate new recycling or to increase current recycling at their facility of priority chemicals. Upon completion of their goal(s), the partners can submit a success story of their accomplishments. In turn, these partners will receive EPA support and assistance for reducing priority chemicals and award recognition for their success. Thus, information from NPEP partners might also be of assistance to EPA in evaluating the impacts of today's proposed rule.

C. Request for Comment on Performance Measurement Approaches

The Agency requests comment on the alternative performance measurement approaches described above for enabling the Agency to measure the actual performance outcomes of today's supplemental proposal. In addition to satisfying federal performance measurement requirements, we are also interested in stakeholder views as to the potential utility of measuring the effectiveness of today's proposed exclusions in achieving their intended induced new recycling and industry cost-savings objectives, and how such information might benefit stakeholders and the regulated community. Finally, we also solicit comment on other performance measurement approaches than those described above, that may be more effective in enabling EPA to

measure the actual future outcomes of today's supplemental proposal.

XV. How Would These Proposed Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA Subtitle C hazardous waste program within the state. Following authorization, EPA retains Subtitle C enforcement authority, although authorized states have primary enforcement responsibility. EPA retains authority under sections 3007, 3008, 3013, 3017 and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's proposed rule would eliminate specific requirements that apply to materials currently managed as hazardous waste, and is being proposed, at least in part, in response to recent court decisions on the definition of solid waste. Specifically, in several decisions, courts have held that EPA's current definition of solid waste at 40 CFR 261.2 is overly broad and would lead to the regulation of some hazardous secondary materials that are not discarded and, therefore, are not solid wastes. In this rulemaking, the exclusion for materials reclaimed under the control of the generator (proposed 40 CFR 261.2(a)(2)(ii)) identifies those hazardous secondary materials that are not discarded and, therefore, are not solid wastes under RCRA. EPA also recognizes that there may be some hazardous secondary materials that are not recycled under the control of the generator, but are not solid wastes because they are reclaimed in a continuous industrial process. Because it was not possible to identify all of the continuous industrial process recycling fact patterns, EPA has proposed a petition process for non-waste determinations at proposed 40 CFR 260.30 (see Section VII above).

EPA believes that the proposed rule describes the appropriate scope of the federal program under RCRA. Thus, reclamation under the control of the generator and recycling in a continuous process, as described herein, are not activities associated with discarded materials and would not be subject to RCRA. In addition, today's proposal also conditionally excludes from the definition of solid waste reclaimed materials that are not under the control of the generator and are not recycled in a continuous industrial process. EPA believes that these exclusions will encourage recycling and that they are consistent with RCRA's statutory objective of conserving valuable material and energy resources.

EPA would strongly encourage states to adopt the regulations being proposed today. When EPA authorizes a state to implement the RCRA hazardous waste program, EPA determines whether the state program is consistent with the federal program, and whether it is no less stringent. This process, codified in 40 CFR 271, ensures national consistency and minimum standards, while providing flexibility to states in implementing rules. In making this determination, EPA evaluates the state requirements to ensure they are no less stringent than the federal requirements. Because today's rule would eliminate specific requirements for hazardous secondary materials that are currently managed as hazardous waste, state programs would no longer need to include those specific requirements in order to be consistent with EPA's regulations, when and if today's rule is finalized.

However, under RCRA section 3009, a state may adopt standards that are more stringent than the federal program. Thus, a state is not required to adopt today's proposal, or a state may choose to adopt only part of today's proposal. Some states incorporate the federal regulations by reference or have specific state statutory requirements that their state program can be no more stringent than the federal regulations. In those cases, EPA anticipates that the exclusions in today's proposal, when and if finalized, would be adopted by these states, consistent with state laws and state administrative procedures, unless they take explicit action as specified by their respective state laws to decline the proposed revisions. We note that if states choose not to adopt the provisions of today's proposal concerning exports, the provisions of 40 CFR 262 Subparts E or H would apply to hazardous secondary materials that are exported.

C. Interstate Transport

Because some states may choose not to seek authorization for today's supplemental proposal, there will probably be cases where the hazardous secondary materials in question will be transported through states with different regulations governing them.

First, a hazardous secondary material which is subject to an exclusion from the definition of solid waste regulations may be sent to a state, or through a state, where it is subject to the hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the hazardous secondary material is excluded, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the hazardous secondary material to be excluded, the transporter must have a manifest, and must move the hazardous secondary material in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the

manifest (40 CFR 263.20, 263.21, 263.22, 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the hazardous secondary material is not excluded. The receiving facility must then sign the manifest and send a copy to the initiating facility.

Second, a hazardous secondary material generated in a state that does not provide an exclusion for the hazardous secondary material may be sent to a state where it is excluded. In this scenario, the hazardous secondary material must be moved by a hazardous waste transporter while the hazardous secondary material is in the generator's state or any other states where it is not excluded. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the hazardous secondary material would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42).

One final point is that RCRA-regulated hazardous wastes, when transported, require an EPA hazardous waste manifest, and are incorporated by reference in Department of Transportation (DOT) regulations in the DOT definition of hazardous material (49 CFR 171.8). Under today's supplemental proposal, a hazardous secondary material that is not a solid waste would no longer need an EPA manifest when transported off-site for recycling, and therefore would not automatically be considered a DOT hazardous material (hazmat). However, if the material contains a chemical or falls into a class of substances that DOT has determined to pose an unacceptable hazard during transportation, it would still be regulated as a DOT hazardous material (a table at 49 CFR 172.101 lists materials considered ''hazardous'' by DOT, according to 23 DOT hazard classes). If it does not, then it would not be so regulated by DOT. EPA believes this is appropriate, since when sent to recycling rather than disposal, these hazardous secondary materials pose no greater risk than similar types of non-waste materials already in transportation for commerce under non-hazmat DOT status. Moreover, regardless of a hazardous secondary material's EPA manifest and DOT hazmat status, EPA believes that today's supplemental proposal is likely to result in a net reduction in annual transportation accident risks during transport of affected materials, due to the expected net reduction in annual miles transported, as a result of the companies which would choose to switch from current offsite hazardous waste management to recycling at either on-site or closer facilities to the generating facility.[10]

XVI. How Has EPA Fulfilled the Administrative Requirements for This Rulemaking?

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because the annual effect on the economy of this proposed action is expected to be greater than $100 million, and the proposed action contains novel policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA prepared an analysis of the potential national economic costs and benefits associated with this proposed action. The analysis is contained in our ''Economics Background Document: Regulatory Impact Analysis (RIA) for EPA's 2007 Supplemental Proposed Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste'' (January 22, 2007, 284 pages) which is available for public review and comment in the EPA Docket (*http://www.regulations.gov*) and is briefly summarized below. If the exclusions are promulgated as proposed today, (i.e., the two generator controlled exclusions involving land- and non-land based units, plus the offsite transfer exclusion, plus the case-by-case petition process) and are adopted by all state governments, EPA expects this action to result in a net effect of $107 million in average annual net cost savings to about 4,600 facilities in 530 industries, and is expected to remove from RCRA regulation 0.65 million tons per year of hazardous secondary materials currently managed as RCRA hazardous waste. These materials consist of 0.59 million tons (91%) that are currently recycled as RCRA hazardous waste, and 0.06 million tons (9%) of hazardous waste that is currently disposed (i.e., landfilled, or incinerated), which EPA expects may switch from disposal to recycling as a result of this action, if promulgated. With respect to each of the proposed exclusions, the $107 million per year best estimate net cost savings effect consists of additive components: (a) $87 million per year for hazardous secondary materials recycled under the control of the generating facility in either land or non-land based units (which includes the onsite, within same-company, and tolling arrangement exclusions), plus (b) $19 million cost savings for conditional exclusion of other offsite transfers, plus (c) $1 million per year cost savings for case-by-case non-waste determinations.

These impact estimates are EPA's best estimates within the economic impact estimation uncertainty range of $93 million to $205 million in annual materials management cost savings, and 0.33 to 1.70 million tons per year in affected hazardous secondary materials, respectively, for the net effect of the proposed regulatory exclusions. The purpose of these impact ranges is to reveal two major sources of uncertainty at the launch of our RIA prior to the final draft of this proposal: (1) Our RIA assigned eight implementation conditions to the best estimate impact for the proposed exclusions from a list of 18 possible conditions formulated at the launch of the RIA. In comparison, today's notice proposes nine conditions which differ by five conditions and standards (i.e., recycling legitimacy criteria, reasonable effort by generators, onsite recordkeeping, land placement, and offsite shipment tracking); the impact uncertainty range lower and upper bounds reflect inclusion of two conditions and of 17 conditions, respectively; and (2) the main underlying data in the RIA is the RCRA Biennial Report database about RCRA

[10] As explained in the ''Economics Background Document,'' in the docket for today's rule, EPA expects that as a result of this rule, transportation distances for hazardous secondary materials that are affected by today's rule are expected to be reduced from averages of about 340 miles for disposal at hazardous waste landfills and between 400 to 520 miles for offsite hazardous waste recycling to 0 miles for on-site recycling (for about 9% of the affected facilities) and an average of about 50 miles for non-hazardous waste recycling (for about 91% of the affected facilities). Because, on an annual nationwide basis, 91% of RCRA hazardous waste is transported by truck, transportation risk is predominantly roadway crash risks involving property damage crashes, personal injury crashes, or fatal crashes. Because of the fact that transportation accident risks positively correlate with travel distances, EPA expects a minimum 85% to 90% reduction in baseline annual transport accident risk for affected materials, as a rough estimate, regardless of DOT regulatory status (i.e., 340 to 520 miles average transport distance baseline, compared to 0 to 50 miles hypothetical average post-promulgation distance).

hazardous waste activity, which includes numerical outliers; to address these statistical outliers, the impact uncertainty ranges reflect inclusion of 99% and 100% of the data, respectively, whereas our best estimate includes 99.5% of the data (i.e., 0.5% of the largest hazardous waste streams removed from the impact estimate).

In addition to these uncertainty factors which the RIA attempted to address directly in the impact computations, there are five other sources of impact uncertainty that our RIA describes as sensitivity analyses and provides estimates of potential overall magnitude: (1) Based on extrapolating the adverse comments by some state governments on exclusion options described in the October 2003 proposal, the economic impacts could be 4% to 46% less than estimated in the RIA from state non-adoption of this rule if promulgated; (2) the RIA is based on a single year 2003 snapshot of RCRA hazardous waste data, but recent (1997–2003) trend data show −17% to +38% fluctuation about mean in annual waste tonnages recycled and disposed, and −54% to +54% fluctuation in annual count of hazardous waste facilities; consequently, future annual impacts could fluctuate rather widely relative to the average annual impact estimates of our RIA based on 2003 data; (3) our RIA is based on hazardous waste tonnages reported as managed in 2003 rather than reported as generated; however, recent trend (1997–2003) data show −34% to +39% annual fluctuations between management and generation quantities; (4) to a large degree macro economic conditions determine the quantity of hazardous waste and secondary industrial materials generated and managed in any given year; for example, although our RIA is built upon a single year 2003 snapshot, one of the top-5 industries generating such materials is NAICS 3241 petroleum refining which is expected to grow almost 6% annually through 2010, which could increase future impacts; and (5) our RIA is founded on the ''large quantity generator'' (LQG) and the ''treatment, storage, disposal, recycler facility'' (TSDRF) data from the RCRA Biennial Report, and therefore to some degree if not double-counted in the TSDRF data, excludes from the impact estimates the RCRA regulatory class of ''small quantity generators'' (SQGs), which may represent a 2% to 3% impact underestimation.

Furthermore, our RIA estimate of potential new induced recycling as a result of this proposal if promulgated, does not include an evaluation of whether the U.S. or global markets for recycled industrial secondary materials are large enough to absorb a potential increase in supply of recycled materials. Market conditions for recycled secondary materials can vary considerably over time. Demand for recycled solvents, for example, is largely dependent on the petroleum market: because virgin solvents are made from petroleum products, high petroleum prices encourage solvent recycling. Similarly, high metals prices obviously favor the recycling of metal-bearing secondary materials. In addition, there are four physical factors that suggest U.S. industries may be near their current technical and economic limits for recycling RCRA hazardous wastes: (1) The recent hazardous waste generation trend shows a 25% decline between 1999 and 2003; (2) the recent hazardous waste recycling trend shows a 73% increase in baseline recycling between 1999 and 2003 accounting in aggregate for metals recycling plus solvents recycling plus other materials recycling (e.g., acid regeneration, non-solvent liquid recycling); (3) recycling of RCRA hazardous wastes and secondary industrial materials is technically difficult in some cases because of numerous chemical co-contaminates in the materials; for example, based on a national survey of large RCRA hazardous waste TSDRFs, 90% of facilities reported between 10 and 60 hazardous chemical constituents in wastes, with 287 constituents reported for a single wastestream, and a total of 724 different chemical constituents reported in surveyed wastes; this survey suggests that most LQGs must address a relatively high number of hazardous chemical constituents in evaluating the feasibility of their waste management options such as recycling; and (4) some RCRA hazardous wastes have relatively low (e.g., less than 1%) assay values for constituents with market value.

EPA requests comment on the regulatory impact analysis, including both the estimates of additional recycling and the cost savings that may result from this proposed rule, and welcomes data from the public about the possible impacts of the uncertainty factors. For example, EPA is seeking comments about whether the codification of the legitimacy criteria, while not intended to impose any additional requirements as compared to the current practice, may result in additional costs or benefits that are not included in the RIA, and, if so, what those additional costs or benefits would be.

In addition to estimating the potential impact of this proposal, EPA's economic analysis also examined three other alternative approaches for recycling exclusions: On-site-only exclusion, intra-industry offsite exclusion, and broad inter-industry transfer exclusion with few conditions, as discussed in EPA's October 2003 proposed rule. Our best estimates of the potential net cost savings for these three other approaches are $63 million, $72 million, and $129 million per year, associated with 0.35 million tons, 0.38 million tons, and 0.67 million tons per year secondary materials potentially affected, respectively. Accounting for estimation uncertainty factors, net cost savings and potentially affected materials for these three options could range between $45 million to $147 million per year and 0.24 million to 0.91 million tons per year for the on-site option, between $56 million to $156 million per year and 0.27 million to 0.98 million tons per year for the intra-industry option, and between $114 million to $206 million per year and 0.46 million to 1.57 million tons per year for the broad inter-industry transfer option. In comparison to these three options, and taking account of impact uncertainty factors, the proposed approach is expected to result in approximately the same range in annual cost savings as the highest impact broad inter-industry transfer option of these three alternatives, because it consists of four components: a broad transfer option with certain conditions plus the two generator controlled options plus the case-by-case petition option, but is expected to affect slightly more waste quantities annually from addition of the case-by-case exclusion.

In selecting the options for today's proposal, EPA considered both the cost and benefits of the different options and the potential for each option to result in materials being discarded and then resulting in remediation or environmental damages. The proposed combination option of excluding materials recycled under the control of the generator, hazardous secondary materials transferred for recycling with certain conditions, and a case-by-case non-waste determination results in the second highest estimated cost savings, number of entities affected and amount of material expected to be induced to new recycling. EPA chose not to pursue the option with the highest estimated annual cost savings ($129 million versus $107 million per year for today's proposed approach) because the lack of conditions for materials transferred to a third-party recycler may result in material being discarded and increase the likelihood of new cleanup sites that would need to be funded by public

funds. See our ''Economics Background Document,'' which is in the docket for today's supplemental proposal, for a more detailed discussion regarding the estimated impacts of the proposed approach, as well as the impact uncertainties, and exclusion option alternatives that we evaluated.

B. Paperwork Reduction Act (ICR)

The information collection requirements in this supplemental proposal have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1189.19.

The information requirements established for this action, and identified in the ICR supporting today's supplemental proposal, are largely self-implementing, except for notice and consent requirements for hazardous secondary materials exported for recycling. This process will ensure that (1) Regulated entities are held accountable to the applicable requirements; (2) state inspectors can verify compliance when needed; and (3) hazardous secondary materials exported for recycling are actually handled as commodities abroad.

EPA has carefully considered the burden that would be imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary, and, to the extent possible, has attempted to minimize the burden imposed. EPA believes that if the minimum requirements specified under the proposed requirements are not met, neither the facilities nor EPA can ensure that hazardous secondary materials sent for recycling are being managed in a manner protective of human health and the environment.

For the recordkeeping and reporting requirements applicable to hazardous secondary materials sent for recycling, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated to be 11,552 hours, with a cost to affected entities (i.e., industrial facilities) of $1,417,242. However, this represents an annual reduction in burden to respondents of 52,050 hours, representing a cost reduction of $3,474,035 per year. The estimated annual operation and maintenance costs to affected entities are $739,469 per year, primarily for purchasing audit reports. There are no startup costs and no costs for purchases of services. Administrative costs to the Agency are estimated to be 1,257 hours per year, representing an annual cost of $49,891.

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 existing systems to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA–HQ–RCRA–2002–0031. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Because this action is designed to lower the cost of waste management for industries subject to the supplemental proposal, this proposal will not result in an adverse economic impact effect on affected small entities. Consequently, I hereby certify that this supplemental proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. Sections 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this supplemental proposal, please refer to the ''Economics Background Document'' available from the EPA Docket (*http://www.regulations.gov*).

EPA therefore concludes that today's supplemental proposal will relieve regulatory burden for all size entities, including small entities. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, 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 requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least

burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this supplemental proposal imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's supplemental proposal is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure a meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Policies that have federalism implications are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

This supplemental proposal 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. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $500,000 in any one year. Thus, the requirements of Section 6 of the Executive Order do not apply to this supplemental proposal. In addition, because this rule is less stringent than the current federal program, states are not required to adopt it.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this supplemental proposal from State and local officials.

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

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

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

The Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 supplemental proposal is not subject to the Executive Order because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This supplemental proposal is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This supplemental proposal reduces regulatory burden and as explained in our Economics Background Document, may possibly induce fuel efficiency and energy savings from voluntary shifting of some types of secondary industrial materials, where cost-effective for firms to do so, from current landfill and incineration disposal, to industrial recycling. It therefore should not adversely affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (ANTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's supplemental proposal does not contain technical standards and therefore the NTTAA is not applicable.

J. Executive Order 12898: Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or

net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

This supplemental proposal would streamline hazardous waste management requirements for certain hazardous secondary materials sent for recycling. Facilities that would be affected by today's proposal include those generating hazardous secondary materials, as well as facilities which recycle such materials. Disposal facilities would not be affected by this proposal. The wide distribution of affected facilities throughout the United States does not suggest any distributional pattern around communities of concern. Specific impacts on low income or minority communities, therefore, are undetermined. Overall, no disproportionate impacts to minorities or low income communities are expected.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: March 15, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6935, 6937, 6938, 6939 and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding in alphabetical order the definitions of ''Land-based unit'' and ''Hazardous secondary materials generated and reclaimed under the control of the generator'' to read as follows:

§ 260.10 Definitions.

* * * * *

Hazardous secondary material generated and reclaimed under the control of the generator means:

(1) That such material is generated and reclaimed at the generating facility (for purposes of this paragraph, generating facility means all contiguous property owned by the generator); or

(2) That such material is generated and reclaimed by the same ''person'' as defined in § 260.10, if the generator certifies the following: ''on behalf of [insert company name] I certify that the indicated hazardous recyclable material will be sent to [insert company name], that the two companies are under the same ownership, and that the owner corporation [insert company name] has acknowledged full responsibility for the safe management of the hazardous recyclable material,'' or

(3) That such material is generated pursuant to a written contract between a tolling contractor and a batch manufacturer and are reclaimed by the tolling contractor, if the tolling contractor retains ownership of, and responsibility for, the recyclable material that is generated during the course of the production of the product. For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product made from raw materials through a written contract with a batch manufacturer. Batch manufacturer means a person who produces a product made from raw materials pursuant to a written contract with a tolling contractor.

* * * * *

Land-based unit means a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

* * * * *

Subpart C—[Amended]

3. Section 260.30 is amended as follows:

a. By revising the section heading.

b. By revising paragraph (b).

c. By adding paragraphs (d), (e), and (f).

§ 260.30 Non-waste determinations and variances from classification as a solid waste.

* * * * *

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

* * * * *

(d) Materials that are reclaimed in a continuous industrial process;

(e) Materials that are indistinguishable in all relevant aspects from a product or intermediate; and

(f) Materials that are reclaimed under the control of the generator, including control through contracts, such as tolling arrangements.

4. Section 260.33 is amended by revising the section heading, the introductory text, and paragraph (a) to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.

The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

(a) The applicant must apply to the Administrator for the variance or non-waste determination. The application must address the relevant criteria contained in § 260.31, § 260.32, or § 260.34 as applicable.

* * * * *

5. Section 260.34 is added to Subpart C to read as follows:

§ 260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Administrator for a formal determination that a material is clearly not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b), (c), or (d) of this section as applicable. If an application is denied, the material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under § 260.31 or solid waste exclusions under § 261.4). Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:

(1) The State determines the material meets the criteria in paragraphs (b), (c), or (d) of this section;

(2) The State requests that EPA review its determination; and

(3) EPA approves the State determination.

(b) The Administrator may grant a non-waste determination for material which is reclaimed in a continuous industrial process if the applicant demonstrates that the material is a part of the production process and is not discarded. The determination will be based on the following criteria:

(1) The extent that the management of the material is part of the continuous primary production process and is not waste treatment;

(2) Whether the capacity of the production process would use the material in a reasonable timeframe and ensure that the material will not be abandoned (for example, based on past practices, market factors, the nature of the material, and any contractual arrangements);

(3) Whether the hazardous constituents in the secondary material are reclaimed rather than discarded to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the primary production process; and

(4) Other relevant factors that demonstrate the material is not discarded.

(c) The Administrator may grant a non-waste determination for material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the material is comparable to a product or intermediate and is not discarded. The determination will be based on the following criteria:

(1) Whether market participants treat the material as a product rather than a waste (for example, based on the current positive value of the material, stability of demand, and any contractual arrangements);

(2) Whether the chemical and physical identity of the material is comparable to commercial products or intermediates;

(3) Whether the hazardous constituents in the material are reclaimed rather than discarded to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process.

(4) Other relevant factors that demonstrate the material is not discarded.

(d) The Administrator may grant a non-waste determination for material which is reclaimed under the control of the generator, including control through contracts such as tolling arrangements, if the applicant demonstrates that the generator retains control of the production and the residuals, and that the material is not discarded. The determination will be based on the following criteria:

(1) Whether the generator retains ownership and liability via a contract or other mechanism for the material and the residuals resulting from its recycling.

(2) Whether the hazardous constituents in the material are reclaimed rather than discarded to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by a production process.

(3) Other relevant factors that demonstrate the material is not discarded.

6. Section 260.42 is added to Subpart C read as follows:

§ 260.42 Notification requirement for generators of hazardous secondary materials generated and reclaimed under the control of the generator.

Generators of hazardous secondary material that has previously been subject to regulation as hazardous wastes, but which will be excluded from regulation under § 261.2(a)(2)(ii) must send a one-time notification to the Regional Administrator. Such notices must identify the name, address, and EPA ID number of the generator (if applicable); the name and phone number of a contact person; the type of material that will be managed according to this exclusion; and when the material will begin to be managed in accordance with this exclusion. A revised notice must be sent to the Regional Administrator in the event of a change to the name, address or EPA ID number of the generator, or a change in the type of material generated. If reclamation takes place at a facility other than the generating facility, the reclaimer must also send a one-time notification to the Regional Administrator. Such notices must identify the name, address, and EPA ID number of the reclamation facility (if applicable); the name and phone number of a contact person; the type of material that will be managed according to the exclusion; and when the material will begin to be managed in accordance with this conditional exclusion. A revised notice must be sent to the Regional Administrator in the event of a change to the name, address or EPA ID number of the reclamation facility, or a change in the type of material reclaimed.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

7. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—[Amended]

8. Section 261.2 is amended as follows:

a. By revising paragraph (a)(1).

b. By revising paragraph (a)(2).

c. By revising paragraph (c)(3).

d. By revising Table 1 in paragraph (c)(4).

e. By adding paragraph (g).

§ 261.2 Definition of solid waste.

* * * * *

(a)(1) A *solid waste* is any discarded material that is not excluded under § 261.4(a) or that is not excluded by a variance granted under §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under §§ 260.30 and 260.34.

* * * * *

(2)(i) A *discarded material* is any material which is:

(A) Abandoned, as explained in paragraph (b) of this section; or

(B) Recycled, as explained in paragraph (c) of this section; or

(C) Considered inherently waste-like, as explained in paragraph (d) of this section; or

(D) A military munition identified as a solid waste in 40 CFR 266.202.

(ii) A hazardous secondary material is not discarded if it is generated and reclaimed within the United States or its territories, provided that the material is only handled in non-land-based units, it is a hazardous secondary material generated and reclaimed under the control of the generator as defined in § 260.10, and it is not speculatively accumulated as defined in § 261.1(c)(8). (See also § 260.42)

* * * * *

(c) * * *

(3) Reclaimed. Materials noted with a ''—'' in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an ''*'' in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§ 261.2(a)(2)(ii), or 261.4(a)(17), or 261.4(a)(23), or 261.4(a)(24) and 261.4(a)(25).

* * * * *

(4) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§ 261.4(a)(17), 261.4(a)(23) or 261.4(a)(24), and 261.4(a)(25)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	—	(*)
By-products (listed in 40 CFR 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	—	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	—	—
Scrap metal other than excluded scrap metal (see 261.1(c)(9))	(*)	(*)	(*)	(*)

Note: The terms ''spent materials,'' ''sludges,'' ''by-products,'' and ''scrap metal'' and ''processed scrap metal'' are defined in 261.1.

* * * * *

(g) Legitimate Recycling.

(1) Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. Persons who recycle such material, as well as persons claiming to be excluded from hazardous waste regulation under § 260.31, § 260.34, § 261.2 or § 261.4 because they are engaged in recycling, must be able to demonstrate that the recycling is legitimate. Moreover, hazardous secondary material must be legitimately recycled to qualify for special management standards under § 261.6 and 40 CFR Part 266.

(2) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product of the recycling process, and the recycling process must produce a valuable product or intermediate.

(i) The hazardous secondary material provides a useful contribution if it:

(A) Contributes valuable ingredients to a product or intermediate; or

(B) Replaces a catalyst or carrier in the recycling process; or

(C) Is the source of a valuable constituent recovered in the recycling process; or

(D) Is recovered or regenerated by the recycling process; or

(E) Is used as an effective substitute for a commercial product.

(ii) The product or intermediate is valuable if it is:

(A) Sold to a third party; or

(B) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The following factors need to be considered in making a determination as to the overall legitimacy of a specific recycling activity. If these factors are not met, then this fact may be an indication that the material is not legitimately recycled:

(i) How the hazardous secondary material to be recycled is managed. The generator and the recycler should manage such material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material should be managed, at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the hazardous secondary material should be contained. Materials that are released to the environment and are not recovered in a timely manner are discarded. If the material is not managed as a valuable commodity, that fact may be an indication that the material is not legitimately recycled.

(ii) Whether the product of the recycling process:

(A) Contains significant concentrations of any Appendix VIII of Part 261 hazardous constituents that are not found in analogous products; or

(B) Contains concentrations of any Appendix VIII of Part 261 hazardous constituents at levels that are significantly elevated from those found in analogous products; or

(C) Exhibits a hazardous characteristic (as defined in Part 261 subpart C) that analogous products do not exhibit. If a product contains any of these concentrations or exhibits a hazardous characteristic, that fact may be an indication that the material is not legitimately recycled.

9. Section 261.4 is amended by adding new paragraphs (a)(23), (24), and (25) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(23) Hazardous secondary material generated and reclaimed within the United States or its territories is not a solid waste provided that:

(i) If it is managed in a land-based unit as defined in § 260.10, the material must be contained; and

(ii) It is a hazardous secondary material generated and reclaimed under the control of the generator as defined in § 260.10; and

(iii) It is not speculatively accumulated, as defined in § 261.1(c)(8); and

(iv) Generators of hazardous secondary material that has previously been subject to regulation as hazardous wastes, but which will be excluded from regulation under this paragraph (a)(23) must send a one-time notification to the Regional Administrator. Such notices must identify the name, address, and EPA ID number of the generator (if applicable); the name and phone number of a contact person; the type of material that will be managed according to this exclusion, and when the material will begin to be managed in accordance with this exclusion. A revised notice must be sent to the Regional Administrator in the event of a change to the name, address or EPA ID number of the generator, or a change in the type of material generated. If reclamation takes place at a facility other than the generating facility, the reclaimer must send a one-time notification to the Regional Administrator. Such notices must identify the name, address, and EPA ID number of the reclamation facility (if applicable); the name and phone number of a contact person; the type of material that will be managed according to the exclusion, and when the material will begin to be managed in accordance with this conditional exclusion. A revised notice must be sent to the Regional Administrator in the event of a change to the name, address

or EPA ID number of the reclamation facility, or a change in the type of material reclaimed.

(24) Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in § 261.1(c)(8); and

(ii) The material is not handled by any person or facility other than the generator, the transporter, or a reclaimer; and

(iii) The generator and each reclaimer of hazardous secondary material that has previously been subject to regulation as hazardous wastes, but which will be excluded from regulation under this paragraph, must send a one-time notification to the Regional Administrator. Such notices must identify the name, address, and EPA ID number of the generator or reclaimer (if applicable); the name and phone number of a contact person; the type of material that will be managed according to the exclusion, and when the materials will begin to be managed in accordance with this conditional exclusion. A revised notice must be sent to the Regional Administrator in the event of a change to the name, address or EPA ID number of the generator, or a change in the type of material generated, and

(iv) Generators of hazardous secondary materials that are eligible for this exclusion must satisfy the following conditions:

(A) Prior to arranging for transport of excluded material to a reclamation facility that is not operating under a RCRA Part B permit or interim status standards, the generator must make reasonable efforts to ensure that the reclaimer intends to legitimately recycle the material and not discard it pursuant to the criteria in § 261.2(g), and that the reclaimer will manage the material in a manner that is protective of human health and the environment. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the generator, provided by the reclaimer, and/or provided by a third party.

(B) The generator must maintain at the generating facility for no less than three years records of all off-site shipments of excluded material. For each shipment, these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the reclamation facility to which it was sent, and

(3) The type and quantity of excluded material in the shipment.

(C) If it is managed in a land-based unit as defined in § 260.10, the material must be contained.

(v) Reclaimers of hazardous secondary material excluded from regulation under this exclusion must satisfy the following conditions:

(A) The reclaimer must maintain at the reclamation facility for no less than three years records of all shipments of excluded material that were received at the facility. For each shipment, these records must at a minimum contain the following information:

(1) Name of the transporter and date the shipment was received;

(2) Name and address of the generating facility from which it was sent; and

(3) The type and quantity of excluded material in the shipment.

(B) The reclaimer must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material or is otherwise contained. An ''analogous raw material'' is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material. Where there is no analogous raw material, or if the secondary hazardous material is managed in a land-based unit as defined in defined in § 260.10, the material must be contained.

(C) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or if they themselves are specifically listed in subpart D of 40 CFR part 261, such residuals are hazardous wastes and must be managed according to the applicable requirements of 40 CFR parts 260 through 272.

(D) The reclaimer must comply with the financial requirements of 40 CFR part 264, subpart H.

(vi) A reclamation facility at which hazardous secondary materials are managed in accordance with the provisions of this exclusion may also accept and manage fully regulated hazardous wastes from generators who do not use this exclusion. Such materials are not solid wastes, and the RCRA regulatory status of the reclamation facility will not be affected, provided that the reclamation facility complies with the requirements specified in § 261.4(a)(24)(i), (ii), (iii) and (v).

(25) Exports. Hazardous secondary material that is exported from the United States and recycled at a reclamation facility located in a foreign country, provided that the exporter complies with the requirements of § 261.4(a)(24)(i)–(iv) and also with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter.

(B) The estimated frequency or rate at which the materials is to be exported and the period of time over which it is to be exported.

(C) The estimated total quantity of material specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the material will pass.

(E) A description of the means by which each shipment of the material will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the reclaimer and any alternate reclaimer.

(G) A description of the manner in which the material will be recycled in the foreign country that will be receiving it.

(H) The name of any transit country through which the material will be sent and a description of the approximate length of time it will remain in such country and the nature of its handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200

Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: ''Attention: Notification of Intent to Export.''

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) (5) (i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of hazardous secondary material under this paragraph is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the material, EPA will forward an Acknowledgment of Consent to the exporter. Where the receiving country objects to receipt of the material or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter receives from EPA a copy of the Acknowledgment of Consent to Export reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export must accompany the shipment. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment cannot be delivered for any reason to the recycler or the alternate recycler, the exporter must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export for a period of three years following receipt of the Acknowledgment.

[FR Doc. E7–5159 Filed 3–23–07; 8:45 am]

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Federal Register

Monday,
March 26, 2007

Part III

Environmental Protection Agency

40 CFR Parts 136 and 503

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 503

[EPA–HQ–OW–2004–0014; FRL–8228–1]

RIN 2040–AE68

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge: Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule modifies the EPA's Guidelines that establish approved bacterial testing procedures for analysis and sampling under the Clean Water Act. EPA proposed these changes for public comment on August 16, 2005 and April 10, 2006. These changes include approval for new methods for monitoring microbial pollutants in wastewater and sewage sludge, including EPA methods, vendor-developed methods and methods developed by voluntary consensus bodies (VCSB) as well as updated versions of currently approved methods. The addition of new and updated methods to the wastewater regulations provides increased flexibility to the regulated community and laboratories in the selection of analytical methods. In addition, EPA has made a technical, non-substantive correction.

DATES: This regulation is effective April 25, 2007. The incorporation by reference of these methods is approved by the Director of the Federal Register on April 25, 2007. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on April 9, 2007 as provided at 40 CFR 23.2 and 23.7.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OW–2004–0014. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the HQ Water Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number is (202) 566–2426.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA website at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: For information regarding the changes to wastewater regulations, contact Robin K. Oshiro, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1075 (e-mail: *oshiro.robin@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

1. Clean Water Act

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits with conditions designed to ensure compliance with the technology-based and water quality-based requirements of the Clean Water Act (CWA). These permits may include restrictions on the quantity of pollutants that may be discharged as well as pollutant measurement and reporting requirements. If EPA has approved test procedures for analysis of a specific pollutant, an NPDES permittee (or applicant for an NPDES permit) must use an approved test procedure (or an approved alternate test procedure) for the specific pollutant when testing for the required waste constituent. Similarly, if EPA has established permit monitoring requirements, measurements taken and reported under an NPDES permit must comply with these requirements. Therefore, entities with NPDES permits will potentially be regulated by the actions in this rulemaking. Categories and entities that may potentially be subject to the requirements of today's rule include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	POTWs that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 122.1 (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA), 40 CFR 403.1 (Pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What process governs judicial review of this rule?

Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's CWA rule may be obtained by filing a petition for review in the United States Circuit Court of Appeals within 120 days from the date of promulgation of this rule. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on April 25, 2007 as provided at 40 CFR 23.2. The requirements of this regulation may also not be challenged later in civil or criminal proceedings brought by EPA.

Abbreviations and Acronyms Used in the Preamble and Final Rule

AOAC: Association of Official Analytical Chemists International

ASTM: American Society for Testing and Materials International

CWA: Clean Water Act
EPA: Environmental Protection Agency
VCSB: Voluntary Consensus Standard Body

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I. Statutory Authority

Clean Water Act

EPA is promulgating today's rule pursuant to the authority of sections 301(a), 304(h), and 501(a) of the Clean Water Act (''CWA'' or the ''Act''), 33 U.S.C. 1311(a), 1314(h), 1361(a). Section 301(a) of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''* * * promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401 of this Act] or permit application pursuant to [section 402 of this Act].'' Section 501(a) of the Act authorizes the Administrator to ''* * * prescribe such regulations as are necessary to carry out this function under [the Act].'' EPA generally has codified its test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR Part 136, though some requirements are codified in other Parts (e.g., 40 CFR Chapter I, Subchapters N and O).

II. Summary of Final Rule

The following sections describe the changes EPA is making in today's final rule.

A. 40 CFR Part 136

This rule approves new and revised methods for inclusion in 40 CFR Part 136. These methods include EPA methods, vendor methods submitted by IDEXX and Hach, and voluntary consensus standards.

The following discussion briefly describes the changes to Part 136 methods approved today.

1. This rule amends the regulations at 40 CFR Part 136 to approve five *E. coli* and two enterococci methods for monitoring microbial pollutants in wastewaters. The *E. coli* methods include EPA Method 1603 (modified mTEC), and vendor methods Colilert® and Colilert-18®, and mColiBlue24®. The enterococci methods include EPA Method 1600 (mEI), and vendor method Enterolert™.

2. The rule approves two fecal coliform and one Salmonella method for monitoring microbial pollutants in sewage sludge (biosolids). The fecal coliform methods include EPA Methods 1680 (LT–EC) and 1681 (A–1) and the Salmonella Method 1682 (Modified MSRV). The methods approved today are alternative methods to those currently prescribed for measuring fecal coliform and salmonella in sewage sludge identified in 40 CFR § 503.8(b).

3. The rule amends the regulations by moving the microbial methods approved for use in ambient waters from Table IA to a new Table IH, and adding Table IH to section 136.3(a).

4. The rule extends the holding time for fecal coliforms using EPA Methods 1680 (LTB–EC) or 1681 (A–1) in sewage sludge for Class A composted, Class B aerobically or anaerobically digested sewage sludge.

5. The rule amends 40 CFR 136.1 to add a new provision that authorizes the use of the methods identified at 40 CFR 503.8(b) and the newly approved Part 136 methods for fecal coliform and Salmonella for permit applications and recordkeeping and reporting required under EPA's sewage sludge regulations at 40 CFR Part 503.

B. 40 CFR Part 503

This rule amends the regulations at 40 CFR Part 503 by adding a cross reference to the 40 CFR Part 136 methods in section 503.8(b).

III. Changes Between the Proposed Rule and the Final Rule

Except as noted below, the content of the final rule is the same as that of the proposed rule. In some instances, EPA revised for clarity the language of the final rule from that in the proposed rule.

A. Revision to 40 CFR Part 136, Applicability

Based on comment received on the Agency's proposal of methods for use in sewage sludge, EPA has amended the applicability provision to clarify that the applicable procedures of Part 136 and Part 503 must be used for measurements for sewage sludge permit applications and reporting and recordkeeping requirements under Part 503.

B. Revision to 40 CFR Part 136, Identification of Test Procedures

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's changes to the rule final without prior proposal and opportunity for comment. Notice and opportunity for public comment is not necessary with respect to these changes because they are not substantive and merely correct errors in cross-referenced provisions as explained below.

Section 136.3(a) provides that discharge parameter values for which reports are required must be determined either by the standard analytical test procedures described in the tables in Part 136 or approved additional or alternate test procedures. EPA has modified the language of 40 CFR 136.3(a) to make three corrections. First, EPA has changed the citation in the last sentence before Table IA from ''paragraphs (b) or (c) of this section or 40 CFR 401.13'' to ''paragraphs (c) of this section, 40 CFR 136.5(a)–(d) and 40 CFR 401.13.'' Paragraph (b) does not describe circumstances in which alternate procedures may be approved while section 136.5 does.

Second, EPA has deleted the clause at the end of the last sentence which states that other test procedures may be used

''* * * when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which

the discharge will occur does not object to the use of such alternate test procedure * * *.''

Only two of the cited provisions require approval by the Regional Administrator or Director of a State. 40 CFR 401.13 does not because it pertains to variances of guidelines of national applicability.

The cross-referenced provisions authorize the use of additional or alternate test procedures in described circumstances. Thus, section 136.3(c) authorizes approval by the Regional Administrator (or Director of an approved State NPDES Program) for analysis of additional pollutants or parameters required to be reported for a particular discharge. Section 136.5(a)–(d) authorizes approval by the Regional Administrator of alternate procedures for use within a particular EPA Region. 40 CFR section 401.13 authorizes the use of analytical procedures that are specifically defined in 40 CFR Parts 402–699. This last category of analytical procedures that are promulgated for specific effluent limitations guidelines and pretreatment standards and not codified in Part 136 do not require the approval of the Director of a State as the current language erroneously implies.

Third, EPA removed an erroneous reference that was listed as a source for the methods listed in section 136.3.

EPA has modified the regulation to provide the correct citation and delete the inaccurate and misleading language. None of the changes EPA is promulgating today are themselves substantive but rather, as noted, only either correct an error in citing to the other applicable provisions of these regulations or correct inaccuracies. The substantive provisions in question were previously subject to notice and comment. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

C. Revision to 40 CFR Part 136, Table IA Title

The rule revises the title to Table IA from ''List of Approved Biological Methods'' to ''List of Approved Biological Methods for Wastewater and Sewage Sludge.'' Today's action updating Table IA at § 136.3 more clearly defines the removal of approved microbiological methods for ambient waters from this table. Such methods have been moved to a new table, Table IH.

D. Revisions to 40 CFR Part 136, Table II and Footnotes

The rule revises Table II (Required Containers, Preservation Techniques, and Holding Times), and the footnotes to Table II at 40 CFR 136.3(e). Today's action updating Table II at § 136.3(e) more clearly defines the holding time for bacterial testing as 6 hours holding time with 2 hours to process samples.

E. Revision to 40 CFR Part 503, Sampling and Analysis

Based on comments received on the Agency's proposal of methods for use in sewage sludge, EPA is including a cross reference to 40 CFR Part 136 in 40 CFR 503.8(b) which prescribes the methods that must be used for sampling and analysis of sewage sludge.

IV. Response to Comments

EPA received 39 comments regarding methods included in this final rule from the August 16, 2005 proposal (70 FR 48256), and 9 comments on the April 10, 2006 Notice of Data Availability (NODA) (71 FR 18329). Commentors represented a number of different interests, including analytical laboratories, water utilities, instrument manufacturers, State and local governments, trade associations, scientists, and private citizens. The public docket for this rule includes the Agency's response to all comments. The majority of the comments were with regard to method inclusion, method use, and quality control requirements. The following is a summary of our response to comments about the lack of connecting language between 40 CFR Parts 136 and 503 for sewage sludge methods.

EPA proposed to approve methods in 40 CFR Part 136 for sewage sludge but did not include an appropriate cross reference in 40 CFR Part 503 to Part 136 so as to allow the use of appropriate 40 CFR 136.3 methods as alternative methods to those listed in 40 CFR 503.8. Based on comments to the proposal, EPA has amended the language in 40 CFR 503.8(b). In addition, as discussed above, EPA has also amended the language in 40 CFR 136.1 regarding the applicability of the methods in this section to 40 CFR Part 503.

V. 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.

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.* This rule does not impose any information collection, reporting, or recordkeeping requirements. This rule merely adds new and updated versions of testing procedures, withdraws some older testing procedures, and establishes new sample collection, preservation, and holding time requirements.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this rule on small entities for methods under the Clean Water Act, 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 less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This final rule will not impose any requirements on small entities. This action approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. Generally, these changes will have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost-effective methods. In some cases, analytical costs may increase slightly due to the additional QC requirements included in the methods that are being approved. However, most laboratories that analyze samples for EPA compliance monitoring have already instituted QC requirements as part of their laboratory practices.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why 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 the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. In fact, this rule should (on the whole) save money for governments and the private sector by increasing method flexibility, and allowing these entities to reduce monitoring costs by taking advantage of innovations. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Generally, this action will have a positive impact by increasing method flexibility, thereby allowing method users to reduce costs by choosing more cost effective methods. In some cases, analytical costs may increase slightly due to changes in methods, but these increases are neither significant nor unique to small governments. This rule merely approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. The costs to State and local governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, 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.''

This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule merely approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. The costs to Tribal governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13175 does not apply to this rule.

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

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

considered by the Agency. This final rule is not subject to the Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This action approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995, (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves technical standards. EPA has decided to use *E. coli*, enterococci and fecal coliform methods published in Standard Methods and ASTM International.

The *E. coli* methods from Standard Methods are method 9223B (Standard Methods 18th, 19th and 20th Editions) and method 9223 B–97 (Standard Methods Online Edition), as well as AOAC method 991.15. The enterococci method from ASTM is method D6503–99. The fecal coliform methods from Standard Methods are methods 9221 C E (Standard Methods 18th, 19th and 20th Editions) and method 9221 C E–99 (Standard Methods Online Edition). Standard Methods can be obtained from American Public Health Association, 1015 15th Street, NW., Washington DC 20005, AOAC methods can be obtained from Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417, and ASTM methods can be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. These newly approved procedures reflect improvements in science and technology. EPA believes that the addition of these methods offer a wider variety of options that may be more cost effective to conduct compliance monitoring of bacterial pollutants.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 25, 2007.

List of Subjects

40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 503

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 28, 2006.

Stephen L. Johnson,

Administrator.

Editorial Note: The Office of the Federal Register received this document on March 8, 2007.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

■ 1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

■ 2. Section 136.1 is revised to read as follows:

§ 136.1 Applicability.

(a) The procedures prescribed herein shall, except as noted in § 136.5, be used to perform the measurements indicated whenever the waste constituent specified is required to be measured for:

(1) An application submitted to the Administrator, or to a State having an approved NPDES program for a permit under section 402 of the Clean Water Act of 1977, as amended (CWA), and/or to reports required to be submitted under NPDES permits or other requests for quantitative or qualitative effluent data under parts 122 to 125 of title 40, and,

(2) Reports required to be submitted by dischargers under the NPDES established by parts 124 and 125 of this chapter, and,

(3) Certifications issued by States pursuant to section 401 of the CWA, as amended.

(b) The procedure prescribed herein and in part 503 of title 40 shall be used to perform the measurements required for an application submitted to the Administrator or to a State for a sewage sludge permit under section 405(f) of the Clean Water Act and for recordkeeping and reporting requirements under part 503 of title 40.

■ 3. Section 136.3 is amended as follows:

■ a. By revising paragraph (a) introductory text and Table IA.

■ b. In paragraph (a) by adding Table IH after the notes of Table IG.

■ c. In paragraph (b) by revising the introductory text and by revising references 2, 6, 10, 11, 34, 38, 39, and 52 through 62; and by adding references 70 through 72.

■ d. By revising paragraph (e).

§ 136.3 Identification of test procedures.

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables

IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202–566–2426); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the **Federal Register**. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used.

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th ed.	Standard methods online	AOAC, ASTM, USGS	Other
Bacteria:						
1. Coliform (fecal), number per 100 mL or number per gram dry weight.	Most Probable Number (MPN),[5] tube 3 dilution, or	p. 132 [3] ..... 1680 [12,14] ..... 1681 [12,19]	9221 C E	9221 C E–99.		
	Membrane filter (MF) [2], single step.	p. 124 [3]	9222 D	9222 D–97	B–0050–85 [5].	
2. Coliform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 132 [3]	9221 C E	9221 C E–99.		
	MF [2], single step	p. 124 [3]	9222 D	9222 D–97.		
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221 B	9221 B–99.		
	MF [2], single step or two step.	p. 108 [3]	9222 B	9222 B–97	B–0025–8 [5].	
4. Coliform (total), in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221 B	9221 B–99.		
	MF [2] with enrichment ...	p. 111 [3]	9222 (B+B.5c)	9222 (B+B.5c) – 97.		
5. *E. coli*, number per 100 mL [20].	MPN [7,9,15] multiple tube/multiple well.	.....	9223 B [13]	9223 B–97 [13]	991.15 [11]	Colilert® [13,17] Colilert-18® [13,16,17]
	MF [2,6,7,8,9] single step ..	1603 [21]	.....	.....	.....	mColiBlue-24® [18]
6. Fecal streptococci, number per 100 mL.	MPN, 5 tube 3 dilution,	p. 139 [3]	9230 B	9230 B–93.		
	MF [2], or ..... Plate count	p. 136 [3] ..... p. 143 [3].	9230 C	9230 C–93	B–0055–85 [5].	
7. Enterococci, number per 100 mL [20].	MPN [7,9], multiple tube/multiple well.	.....	.....	.....	D6503–99 [10]	Enterolert® [13,23]
	MF [2,6,7,8,9] single step ..	1600 [24].				
8. Salmonella, number per gram dry weight [12].	MPN multiple tube	1682 [22].				
Aquatic Toxicity:						
9. Toxicity, acute, fresh water organisms, LC_{50}, percent effluent.	*Ceriodaphnia dubia* acute.	2002.0 [25].				
	Daphnia puplex and *Daphnia magna* acute.	2021.0 [25].				
	Fathead Minnow, *Pimephales promelas*, and Bannerfin *shiner*, *Cyprinella leedsi*, acute.	2000.0 [25].				

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th ed.	Standard methods online	AOAC, ASTM, USGS	Other
	Rainbow Trout, *Oncorhynchus mykiss*, and brook trout, *Salvelinus fontinalis*, acute.	2019.0 [25].				
10. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC_{50}, percent effluent.	Mysid, *Mysidopsis bahia*, acute.	2007.0 [25].				
	Sheepshead Minnow, *Cyprinodon* variegatus, acute.	2004.0 [25].				
	Silverside, *Menidia beryllina*, *Menidia menidia*, and *Menidia peninsulae*, acute.	2006.0 [25].				
11. Toxicity, chronic, fresh water organisms, NOEC or IC_{25}, percent effluent.	Fathead minnow, *Pimephales promelas*, larval survival and growth.	1000.0 [26].				
	Fathead minnow, *Pimephales promelas*, embryo-larval survival and teratogenicity.	1001.0 [26].				
	Daphnia, *Ceriodaphnia dubia*, survival and reproduction.	1002.0 [26].				
	Green alga, *Selenastrum capricornutum*, growth.	1003.0 [26].				
12. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC_{25}, percent effluent.	Sheepshead minnow, *Cyprinodon variegatus*, larval survival and growth.	1004.0 [27].				
	Sheepshed minnow, *Cyprinodon variegatus*, embryo-larval survival and teratogenicity.	1005.0 [27].				
	Inland silverside, *Menidia beryllina*, larval survival and growth.	1006.0 [27].				
	Mysid, *Mysidopsis bahia*, survival, growth, and fecundity.	1007.0 [27].				
	Sea urchin, *Arbacia punctulata*, fertilization.	1008.0 [27].				

[1] The method must be specified when results are reported.

[2] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH, EPA/600/8–78/017.

[4] [Reserved].

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of the Interior, Reston, VA.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[8] When the MF method has been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[9] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current Standard Methods for the Examination of Water and Wastewater or EPA alternate test procedure (ATP) guidelines.

[10] ASTM. 2000, 1999, 1996. Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. ASTM International. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[11] AOAC. 1995. Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

[12] Recommended for enumeration of target organism in sewage sludge.

[13] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli*.

[14] USEPA. July 2006. Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using Lauryl-Tryptose Broth (LTB) and EC Medium. US Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–012.

[15] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

[16] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35 °C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[17] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[18] A description of the mColiBlue24® test, Total Coliforms and *E. coli*, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010.

[19] USEPA. July 2006. Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A–1 Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–013.

[20] Recommended for enumeration of target organism in wastewater effluent.

[21] USEPA. July 2006. Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–011.

[22] USEPA. July 2006. Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–014.

[23] A description of the Enterolert® test may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[24] USEPA. July 2006. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–009.

[25] USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/821/R–02/012.

[26] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition, U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/821/R–02/013.

[27] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/821/R–02/014.

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TABLE IH.—LIST OF APPROVED MICROBIOLOGICAL METHODS FOR AMBIENT WATER

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods online	AOAC, ASTM, USGS	Other
Bacteria:						
1. E. coli, number per 100 mL.	MPN [6,8,14] multiple tube,	.....	9221 B.1/9221 F [11,13].	9221 B.1–99/ 9221 F [11,13].		
	Multiple tube/multiple well,	.....	9223 B [12]	9223 B–97 [12] ...	991.15 [10]	Colilert® [12,16] Colilert-18® [12,15,16].
	MF [2,5,6,7,8] two step, or	1103.1 [19]	9222 B/9222 G [18], 9213 D.	9222 B–97/ 9222 G [18].	D5392–93 [9].	
	Single step	1603 [20], 1604 [21]	.....	.....	.....	mColiBlue-24® [17].
2. Enterococci, number per 100 mL.	MPN [6,8] multiple tube,	.....	9230 B	9230 B–93.		
	Multiple tube/multiple well.	.....	.....	.....	D6503–99 [9]	Enterolert® [12,22].
	MF [2,5,6,7,8] two step	1106.1 [23]	9230 C	9230 C–93	D5259–92 [9].	
	Single step, or	1600 [24].				
	Plate count	p. 143 [3].				
Protozoa:						
3. *Cryptosporidium* ..	Filtration/IMS/FA	1622 [25], 1623 [26].				
4. *Giardia*	Filtration/IMS/FA	1623 [26].				

[1] The method must be specified when results are reported.

[2] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH. EPA/600/8–78/017.

[4] [Reserved]

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[6] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[7] When the MF method has not been used previously to test waters with high turbidity, large number of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[8] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current Standard Methods for the Examination of Water and Wastewater or EPA alternate test procedure (ATP) guidelines.

[9] ASTM. 2000, 1999, 1996. Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. ASTM International. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[10] AOAC. 1995. Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

[11] The multiple-tube fermentation test is used in 9221B.1. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.

[12] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli*.

[13] After prior enrichment in a presumptive medium for total coliform using 9221B.1, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 μg/mL of MUG may be used.

[14] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

[15] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and E. coli that provides results within 18 h of incubation at 35 °C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[16] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[17] A description of the mColiBlue24® test, Total Coliforms and *E. coli*, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010.

[18] Subject total coliform positive samples determined by 9222B or other membrane filter procedure to 9222G using NA–MUG media.

[19] USEPA. July 2006. Method 1103.1: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–010.

[20] USEPA. July 2006. Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–011.

[21] Preparation and use of MI agar with a standard membrane filter procedure is set forth in the article, Brenner et al. 1993. ''New Medium for the Simultaneous Detection of Total Coliform and *Escherichia coli* in Water.'' Appl. Environ. Microbiol. 59:3534–3544 and in USEPA. September 2002.: Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA 821–R–02–024.

[22] A description of the Enterolert® test may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[23] USEPA. July 2006. Method 1106.1: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–008.

[24] USEPA. July 2006. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–06–009.

[25] Method 1622 uses filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium*. USEPA. 2001. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–01–026.

[26] Method 1623 uses filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. USEPA. 2001. Method 1623. *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–01–025.

(b) The full texts of the methods from the following references which are cited in Tables IA, IB, IC, ID, IE, IF, IG and IH are incorporated by reference into this regulation and may be obtained from the source identified. All costs cited are subject to change and must be verified from the indicated source. The full texts of all the test procedures cited are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

References, Sources, Costs, and Table Citations

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(2) USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/8–78/017. Available at *http://www.epa.gov/clariton/srch.htm* or from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Pub. No. PB–290329/A.S. Table IA, Note 3; Table IH, Note 3.

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(6) American Public Health Association. 1992, 1995, and 1998. Standard Methods for the Examination of Water and Wastewater. 18th, 19th, and 20th Edition (respectively). Available from: American Public Health Association, 1015 15th Street, NW., Washington, DC 20005. Standard Methods Online is available through the Standard Methods Web site (*http://www.standardmethods.org*). Tables IA, IB, IC, ID, IE, and IH.

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(10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, or *http://www.astm.org*. Tables IA, IB, IC, ID, IE, and IH.

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(11) USGS. 1989. U.S. Geological Survey Techniques of Water-Resources Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of the Interior, Reston, Virginia. Available from USGS Books and Open-File Reports Section, Federal Center, Box 25425, Denver, Colorado 80225. Table IA, Note 5; Table IH.

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(34) USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA 821–R–02–012. Available at *http://www.epa.gov/epahome/index/*

sources.htm or from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Pub. No. PB2002–108488. Table IA, Note 25.

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(38) USEPA. October 2002. Short-Term Methods for Measuring the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA 821–R–02–013. Available at *http://www.epa.gov/epahome/index/sources.htm* or from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Pub. No. PB2002–108489. Table IA, Note 26.

(39) USEPA. October 2002. Short-Term Methods for Measuring the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA 821–R–02–014. Available at *http://www.epa.gov/epahome/index/sources.htm* or from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Pub. No. PB2002–108490. Table IA, Note 27.

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(52) IDEXX Laboratories, Inc. 2002. Description of Colilert®, Colilert-18®, Quanti-Tray®, Quanti-Tray®/2000, Enterolert® methods are available from IDEXX Laboratories, Inc., One Idexx Drive, Westbrook, Maine 04092. Table IA, Notes 17 and 23; Table IH, Notes 16 and 22.

(53) Hach Company, Inc. Revision 2, 1999. Description of m-ColiBlue24® Method, Total Coliforms and *E. coli*, is available from Hach Company, 100 Dayton Ave, Ames IA 50010. Table IA, Note 18; Table IH, Note 17.

(54) USEPA. July 2006. Method 1103.1: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington DC EPA–621–R–06–010. Available at *http://www.epa.gov/waterscience/methods/*. Table IH, Note 19.

(55) USEPA. July 2006. Method 1106.1: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA). U.S. Environmental Protection Agency, Office of Water, Washington DC EPA–621–R–06–008. Available at *http://www.epa.gov/waterscience/methods/*. Table IH, Note 23

(56) USEPA. July 2006. Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington DC EPA–821–R–06–011. Available at *http://www.epa.gov/waterscience/methods/*. Table IH, Note 19; Table IH, Note 20.

(57) Brenner *et al.* 1993. New Medium for the Simultaneous Detection of Total Coliforms and *Escherichia coli* in Water. Appl. Environ. Microbiol. 59:3534–3544. Available from the American Society for Microbiology, 1752 N Street NW., Washington DC 20036. Table IH, Note 21.

(58) USEPA. September 2002. Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium). U.S. Environmental Protection Agency, Office of Water, Washington DC EPA–821–R–02–024. Available at *http://www.epa.gov/waterscience/methods/*. Table IH, Note 20.

(59) USEPA. July 2006. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington DC EPA–821–R–06–009. Available at *http://www.epa.gov/waterscience/methods/*. Table IA, Note 24; Table IH, Note 24.

(60) USEPA. April 2001. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington DC EPA–821–R–01–026. Available at *http://www.epa.gov/waterscience/methods/*. Table IH, Note 25.

(61) USEPA. April 2001. Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA–821–R–01–025. Available at *http://www.epa.gov/waterscience/methods/*. Table IH, Note 26.

(62) AOAC. 1995. Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877–2417. Table IA, Note 11; Table IH.

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(70) USEPA. July 2006. Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using Lauryl Tryptose Broth (LTB) and EC Medium. U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA 821–R–06–012. Available at *http://www.epa.gov/waterscience/methods/*.

(71) USEPA. July 2006. Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A–1 Medium. U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA 821–R–06–013. Available at *http://www.epa.gov/waterscience/methods/*.

(72) USEPA. July 2006. Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium. U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA 821–R–06–014. Available at *http://www.epa.gov/waterscience/methods/*.

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(e) Sample preservation procedures, container materials, and maximum allowable holding times for parameters are cited in Tables IA, IB, IC, ID, IE, IF, IG and IH are prescribed in Table II. Information in the table takes precedence over information in specific methods or elsewhere. Any person may apply for a variance from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples taken from a specific discharge. Applications for variances may be made by letters to the Regional Administrator in the Region in which the discharge will occur. Sufficient data should be provided to assure such variance does not adversely affect the integrity of the sample. Such data will be forwarded by the Regional Administrator, to the Alternate Test Procedure Program Coordinator, Washington, DC, for technical review and recommendations for action on the variance application. Upon receipt of the recommendations from the Alternate Test Procedure Program Coordinator, the Regional Administrator may grant a variance applicable to the specific discharge to the applicant. A decision to approve or deny a variance will be made within 90 days of receipt of the application by the Regional Administrator.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
Table IA—Bacterial Tests:			
1–5. Coliform, total, fecal, and *E. coli*	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5]	6 hours.[22,23]
6. Fecal streptococci	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5]	6 hours.[22]
7. Enterococci	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5]	6 hours.[22]
8. Salmonella	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5]	6 hours.[22]
Table IA—Aquatic Toxicity Tests:			
9–11. Toxicity, acute and chronic	P, FP, G	Cool, ≤6 °C [16]	36 hours.
Table IB—Inorganic Tests:			
1. Acidity	P, FP, G	Cool, ≤6 °C [18]	14 days.
2. Alkalinity	P, FP, G	Cool, ≤6 °C [18]	14 days.
4. Ammonia	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2	28 days.
9. Biochemical oxygen demand	P, FP, G	Cool, ≤6 °C [18]	48 hours.
10. Boron	P, FP, or Quartz	HNO_3 to pH<2	6 months.
11. Bromide	P, FP, G	None required	28 days.
14. Biochemical oxygen demand, carbonaceous.	P, FP G	Cool, ≤6 °C [18]	48 hours.
15. Chemical oxygen demand	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2	28 days.
16. Chloride	P, FP, G	None required	28 days.
17. Chlorine, total residual	P, G	None required	Analyze within 15 minutes.
21. Color	P, FP, G	Cool, ≤6 °C [18]	48 hours.
23–24. Cyanide, total or available (or CATC)	P, FP, G	Cool, ≤6 °C [18], NaOH to pH>12 [6], reducing agent [5].	14 days.
25. Fluoride	P	None required	28 days.
27. Hardness	P, FP, G	HNO_3 or H_2SO_4 to pH<2	6 months.
28. Hydrogen ion (pH)	P, FP, G	None required	Analyze within 15 minutes.
31, 43. Kjeldahl and organic N	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2	28 days.
Table IB—Metals: [7]			
18. Chromium VI	P, FP, G	Cool, ≤6 °C [18], pH = 9.3–9.7 [20]	28 days.
35. Mercury (CVAA)	P, FP, G	HNO_3 to pH<2	28 days.
35. Mercury (CVAFS)	FP, G; and FP-lined cap [17].	5 mL/L 12N HCl or 5 mL/L BrCl [17]	90 days.[17]
3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75.	P, FP, G	HNO_3 to pH<2, or at least 24 hours prior to analysis [19].	6 months.
Metals, except boron, chromium VI, and mercury.			
38. Nitrate	P, FP, G	Cool, ≤6 °C [18]	48 hours.
39. Nitrate-nitrite	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2	28 days.
40. Nitrite	P, FP, G	Cool, ≤6 °C [18]	48 hours.
41. Oil and grease	G	Cool to ≤6 °C [18], HCl or H_2SO_4 to pH<2.	28 days.
42. Organic Carbon	P, FP, G	Cool to ≤6 °C [18], HCl, H_2SO_4, or H_3PO_4 to pH<2.	28 days.
44. Orthophosphate	P, FP, G	Cool, ≤6 °C [18]	Filter within 15 minutes; Analyze within 48 hours.
46. Oxygen, Dissolved Probe	G, Bottle and top	None required	Analyze within 15 minutes.
47. Winkler	G, Bottle and top	Fix on site and store in dark	8 hours.
48. Phenols	G	Cool, ≤6 °C [18], H_2SO_4 to pH<2	28 days.
49. Phosphorous (elemental)	G	Cool, ≤6 °C [18]	48 hours.
50. Phosphorous, total	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2	28 days.
53. Residue, total	P, FP, G	Cool, ≤6 °C [18]	7 days.
54. Residue, Filterable	P, FP, G	Cool, ≤6 °C [18]	7 days.
55. Residue, Nonfilterable (TSS)	P, FP, G	Cool, ≤6 °C [18]	7 days.
56. Residue, Settleable	P, FP, G	Cool, ≤6 °C [18]	48 hours.
57. Residue, Volatile	P, FP, G	Cool, ≤6 °C [18]	7 days.
61. Silica	P or Quartz	Cool, ≤6 °C [18]	28 days.
64. Specific conductance	P, FP, G	Cool, ≤6 °C [18]	28 days.
65. Sulfate	P, FP, G	Cool, ≤6 °C [18]	28 days.
66. Sulfide	P, FP, G	Cool, ≤6 °C [18], add zinc acetate plus sodium hydroxide to pH>9.	7 days.
67. Sulfite	P, FP, G	None required	Analyze within 15 minutes.
68. Surfactants	P, FP, G	Cool, ≤6 °C [18]	48 hours.
69. Temperature	P, FP, G	None required	Analyze.
73. Turbidity	P, FP, G	Cool, ≤6 °C [18]	48 hours.
Table IC—Organic Tests [8]			

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
13, 18–20, 22, 24–28, 34–37, 39–43, 45–47, 56, 76, 104, 105, 108–111, 113. Purgeable Halocarbons.	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	14 days.
6, 57, 106. Purgeable aromatic hydrocarbons	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], HCl to pH 2 [9].	14 days.[9]
3, 4. Acrolein and acrylonitrile	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], pH to 4–5 [10].	14 days.[10]
23, 30, 44, 49, 53, 77, 80, 81, 98, 100, 112. Phenols [11].	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	7 days until extraction, 40 days after extraction.
7, 38. Benzidines [11, 12]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	7 days until extraction.[13]
14, 17, 48, 50–52. Phthalate esters [11]	G, FP-lined cap	Cool, ≤6 °C [18]	7 days until extraction, 40 days after extraction.
82–84. Nitrosamines [11, 14]	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction.
88–94. PCBs [11]	G, FP-lined cap	Cool, ≤6 °C [18]	1 year until extraction, 1 year after extraction.
54, 55, 75, 79. Nitroaromatics and isophorone [11].	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction.
1, 2, 5, 8–12, 32, 33, 58, 59, 74, 78, 99, 101. Polynuclear aromatic hydrocarbons [11].	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction.
15, 16, 21, 31, 87. Haloethers [11]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	7 days until extraction, 40 days after extraction.
29, 35–37, 63–65, 107. Chlorinated hydrocarbons [11].	G, FP-lined cap	Cool, ≤6 °C [18]	7 days until extraction, 40 days after extraction.
60–62, 66–72, 85, 86, 95–97, 102, 103. CDDs/CDFs [11].			
Aqueous Samples: Field and Lab Preservation	G	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], pH<9.	1 year.
Solids and Mixed-Phase Samples: Field Preservation.	G	Cool, ≤6 °C [18]	7 days.
Tissue Samples: Field Preservation	G	Cool, ≤6 °C [18]	24 hours.
Solids, Mixed-Phase, and Tissue Samples: Lab Preservation.	G	Freeze, ≤−10 °C	1 year.
Table ID—Pesticides Tests:			
1–70. Pesticides [11]	G, FP-lined cap	Cool, ≤6 °C [18], pH 5–9 [15]	7 days until extraction, 40 days after extraction.
Table IE—Radiological Tests:			
1–5. Alpha, beta, and radium	P, FP, G	HNO_3 to pH<2	6 months.
Table IH—Bacterial Tests:			
1. *E. coli*	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5]	6 hours.[22]
2. Enterococci	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5]	6 hours.[22]
Table IH—Protozoan Tests:			
8. Cryptosporidium	LDPE; field filtration	0–8 °C	96 hours.[21]
9. Giardia	LDPE; field filtration	0–8 °C	96 hours.[21]

[1] "P" is polyethylene; "FP" is fluoropolymer (polytetrafluoroethylene (PTFE; Teflon®), or other fluoropolymer, unless stated otherwise in this Table II; "G" is glass; "PA" is any plastic that is made of a sterlizable material (polypropylene or other autoclavable plastic); "LDPE" is low density polyethylene.

[2] Except where noted in this Table II and the method for the parameter, preserve each grab sample within 15 minutes of collection. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), refrigerate the sample at ≤6 °C during collection unless specified otherwise in this Table II or in the method(s). For a composite sample to be split into separate aliquots for preservation and/or analysis, maintain the sample at ≤6 °C, unless specified otherwise in this Table II or in the method(s), until collection, splitting, and preservation is completed. Add the preservative to the sample container prior to sample collection when the preservative will not compromise the integrity of a grab sample, a composite sample, or an aliquot split from a composite sample; otherwise, preserve the grab sample, composite sample, or aliquot split from a composite sample within 15 minutes of collection. If a composite measurement is required but a composite sample would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (e.g., 4 samples over the course of a day, at 6-hour intervals). Grab samples must be analyzed separately and the concentrations averaged. Alternatively, grab samples may be collected in the field and composited in the laboratory if the compositing procedure produces results equivalent to results produced by arithmetic averaging of the results of analysis of individual grab samples. For examples of laboratory compositing procedures, see EPA Method 1664A (oil and grease) and the procedures at 40 CFR 141.34(f)(14)(iv) and (v) (volatile organics).

[3] When any sample is to be shipped by common carrier or sent via the U.S. Postal Service, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR Part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before the start of analysis and still be considered valid (e.g., samples analyzed for fecal coliforms may be held up to 6 hours prior to commencing analysis). Samples may be held for longer periods only if the permittee or monitoring laboratory has data on file to show that, for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). For a grab sample, the holding time begins at the time of collection. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), the holding time begins at the time of the end of collection of the composite sample. For a set of grab samples composited in the field or laboratory, the holding time begins at the time of collection of the last grab sample in the set. Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the sample for a shorter time if it knows that a shorter time is necessary to maintain sample stability. See § 136.3(e) for details. The date and time of collection of an individual grab sample is the date and time at which the sample is collected. For a set of grab samples to be composited, and that are all collected on the same calendar date, the date of collection is the date on which the samples are collected. For a set of grab samples to be composited, and that are collected across two calendar dates, the date of collection is the dates of the two days; e.g., November 14–15. For a composite sample collected automatically on a given date, the date of collection is the date on which the sample is collected. For a composite sample collected automatically, and that is collected across two calendar dates, the date of collection is the dates of the two days; e.g., November 14–15.

[5] Add a reducing agent only if an oxidant (e.g., chlorine) is present. Reducing agents shown to be effective are sodium thiosulfate ($Na_2S_2O_3$), ascorbic acid, sodium arsenite ($NaAsO_2$), or sodium borohydride ($NaBH_4$). However, some of these agents have been shown to produce a positive or negative cyanide bias, depending on other substances in the sample and the analytical method used. Therefore, do not add an excess of reducing agent. Methods recommending ascorbic acid (e.g., EPA Method 335.4) specify adding ascorbic acid crystals, 0.1–0.6 g, until a drop of sample produces no color on potassium iodide (KI) starch paper, then adding 0.06 g (60 mg) for each liter of sample volume. If $NaBH_4$ or $NaAsO_2$ is used, 25 mg/L $NaBH_4$ or 100 mg/L $NaAsO_2$ will reduce more than 50 mg/L of chlorine (see method "Kelada-01" and/or Standard Method 4500–CN^- for more information). After adding reducing agent, test the sample using KI paper, a test strip (e.g. for chlorine, SenSafe™ Total Chlorine Water Check 480010) moistened with acetate buffer solution (see Standard Method 4500–Cl.C.3e), or a chlorine/oxidant test method (e.g., EPA Method 330.4 or 330.5), to make sure all oxidant is removed. If oxidant remains, add more reducing agent. Whatever agent is used, it should be tested to assure that cyanide results are not affected adversely.

[6] Sample collection and preservation: Collect a volume of sample appropriate to the analytical method in a bottle of the material specified. If the sample can be analyzed within 48 hours and sulfide is not present, adjust the pH to > 12 with sodium hydroxide solution (e.g., 5% w/v), refrigerate as specified, and analyze within 48 hours. Otherwise, to extend the holding time to 14 days and mitigate interferences, treat the sample immediately using any or all of the following techniques, as necessary, followed by adjustment of the sample pH to > 12 and refrigeration as specified. There may be interferences that are not mitigated by approved procedures. Any procedure for removal or suppression of an interference may be employed, provided the laboratory demonstrates that it more accurately measures cyanide. Particulate cyanide (e.g., ferric ferrocyanide) or a strong cyanide complex (e.g., cobalt cyanide) are more accurately measured if the laboratory holds the sample at room temperature and pH > 12 for a minimum of 4 hours prior to analysis, and performs UV digestion or dissolution under alkaline (pH=12) conditions, if necessary.

(1) Sulfur: To remove elemental sulfur (S_8), filter the sample immediately. If the filtration time will exceed 15 minutes, use a larger filter or a method that requires a smaller sample volume (e.g., EPA Method 335.4 or Lachat Method 01). Adjust the pH of the filtrate to > 12 with NaOH, refrigerate the filter and filtrate, and ship or transport to the laboratory. In the laboratory, extract the filter with 100 mL of 5% NaOH solution for a minimum of 2 hours. Filter the extract and discard the solids. Combine the 5% NaOH-extracted filtrate with the initial filtrate, lower the pH to approximately 12 with concentrated hydrochloric or sulfuric acid, and analyze the combined filtrate. Because the detection limit for cyanide will be increased by dilution by the filtrate from the solids, test the sample with and without the solids procedure if a low detection limit for cyanide is necessary. Do not use the solids procedure if a higher cyanide concentration is obtained without it. Alternatively, analyze the filtrates from the sample and the solids separately, add the amounts determined (in µg or mg), and divide by the original sample volume to obtain the cyanide concentration.

(2) Sulfide: If the sample contains sulfide as determined by lead acetate paper, or if sulfide is known or suspected to be present, immediately conduct one of the volatilization treatments or the precipitation treatment as follows: Volatilization—Headspace expelling. In a fume hood or well-ventilated area, transfer 0.75 liter of sample to a 4.4 L collapsible container (e.g., Cubitainer™). Acidify with concentrated hydrochloric acid to pH < 2. Cap the container and shake vigorously for 30 seconds. Remove the cap and expel the headspace into the fume hood or open area by collapsing the container without expelling the sample. Refill the headspace by expanding the container. Repeat expelling a total of five headspace volumes. Adjust the pH to > 12, refrigerate, and ship or transport to the laboratory. Scaling to a smaller or larger sample volume must maintain the air to sample volume ratio. A larger volume of air will result in too great a loss of cyanide (> 10%). Dynamic stripping: In a fume hood or well-ventilated area, transfer 0.75 liter of sample to a container of the material specified and acidify with concentrated hydrochloric acid to pH < 2. Using a calibrated air sampling pump or flowmeter, purge the acidified sample into the fume hood or open area through a fritted glass aerator at a flow rate of 2.25 L/min for 4 minutes. Adjust the pH to > 12, refrigerate, and ship or transport to the laboratory. Scaling to a smaller or larger sample volume must maintain the air to sample volume ratio. A larger volume of air will result in too great a loss of cyanide (> 10%). Precipitation: If the sample contains particulate matter that would be removed by filtration, filter the sample prior to treatment to assure that cyanide associated with the particulate matter is included in the measurement. Ship or transport the filter to the laboratory. In the laboratory, extract the filter with 100 mL of 5% NaOH solution for a minimum of 2 hours. Filter the extract and discard the solids. Combine the 5% NaOH-extracted filtrate with the initial filtrate, lower the pH to approximately 12 with concentrated hydrochloric or sulfuric acid, and analyze the combined filtrate. Because the detection limit for cyanide will be increased by dilution by the filtrate from the solids, test the sample with and without the solids procedure if a low detection limit for cyanide is necessary. Do not use the solids procedure if a higher cyanide concentration is obtained without it. Alternatively, analyze the filtrates from the sample and the solids separately, add the amounts determined (in µg or mg), and divide by the original sample volume to obtain the cyanide concentration. For removal of sulfide by precipitation, raise the pH of the sample to > 12 with NaOH solution, then add approximately 1 mg of powdered cadmium chloride for each mL of sample. For example, add approximately 500 mg to a 500-mL sample. Cap and shake the container to mix. Allow the precipitate to settle and test the sample with lead acetate paper. If necessary, add cadmium chloride but avoid adding an excess. Finally, filter through 0.45 micron filter. Cool the sample as specified and ship or transport the filtrate and filter to the laboratory. In the laboratory, extract the filter with 100 mL of 5% NaOH solution for a minimum of 2 hours. Filter the extract and discard the solids. Combine the 5% NaOH-extracted filtrate with the initial filtrate, lower the pH to approximately 12 with concentrated hydrochloric or sulfuric acid, and analyze the combined filtrate. Because the detection limit for cyanide will be increased by dilution by the filtrate from the solids, test the sample with and without the solids procedure if a low detection limit for cyanide is necessary. Do not use the solids procedure if a higher cyanide concentration is obtained without it. Alternatively, analyze the filtrates from the sample and the solids separately, add the amounts determined (in µg or mg), and divide by the original sample volume to obtain the cyanide concentration. If a ligand-exchange method is used (e.g., ASTM D6888), it may be necessary to increase the ligand-exchange reagent to offset any excess of cadmium chloride.

(3) Sulfite, thiosulfate, or thiocyanate: If sulfite, thiosulfate, or thiocyanate is known or suspected to be present, use UV digestion with a glass coil (Method Kelada-01) or ligand exchange (Method OIA–1677) to preclude cyanide loss or positive interference.

(4) Aldehyde: If formaldehyde, acetaldehyde, or another water-soluble aldehyde is known or suspected to be present, treat the sample with 20 mL of 3.5% ethylenediamine solution per liter of sample.

(5) Carbonate: Carbonate interference is evidenced by noticeable effervescence upon acidification in the distillation flask, a reduction in the pH of the absorber solution, and incomplete cyanide spike recovery. When significant carbonate is present, adjust the pH to ≥12 using calcium hydroxide instead of sodium hydroxide. Allow the precipitate to settle and decant or filter the sample prior to analysis (also see Standard Method 4500–CN.B.3.d).

(6) Chlorine, hypochlorite, or other oxidant: Treat a sample known or suspected to contain chlorine, hypochlorite, or other oxidant as directed in footnote 5.

[7] For dissolved metals, filter grab samples within 15 minutes of collection and before adding preservatives. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), filter the sample within 15 minutes after completion of collection and before adding preservatives. If it is known or suspected that dissolved sample integrity will be compromised during collection of a composite sample collected automatically over time (e.g., by interchange of a metal between dissolved and suspended forms), collect and filter grab samples to be composited (footnote 2) in place of a composite sample collected automatically.

[8] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

[9] If the sample is not adjusted to pH 2, then the sample must be analyzed within seven days of sampling.

[10] The pH adjustment is not required if acrolein will not be measured. Samples for acrolein receiving no pH adjustment must be analyzed within 3 days of sampling.

[11] When the extractable analytes of concern fall within a single chemical category, the specified preservative and maximum holding times should be observed for optimum safeguard of sample integrity (i.e., use all necessary preservatives and hold for the shortest time listed). When the analytes of concern fall within two or more chemical categories, the sample may be preserved by cooling to ≤6 °C, reducing residual chlorine with 0.008% sodium thiosulfate, storing in the dark, and adjusting the pH to 6–9; samples preserved in this manner may be held for seven days before extraction and for forty days after extraction. Exceptions to this optional preservation and holding time procedure are noted in footnote 5 (regarding the requirement for thiosulfate reduction), and footnotes 12, 13 (regarding the analysis of benzidine).

[12] If 1,2-diphenylhydrazine is likely to be present, adjust the pH of the sample to 4.0 ± 0.2 to prevent rearrangement to benzidine.

[13] Extracts may be stored up to 30 days at < 0 °C.

[14] For the analysis of diphenylnitrosamine, add 0.008% $Na_2S_2O_3$ and adjust pH to 7–10 with NaOH within 24 hours of sampling.

[15] The pH adjustment may be performed upon receipt at the laboratory and may be omitted if the samples are extracted within 72 hours of collection. For the analysis of aldrin, add 0.008% $Na_2S_2O_3$.

[16] Sufficient ice should be placed with the samples in the shipping container to ensure that ice is still present when the samples arrive at the laboratory. However, even if ice is present when the samples arrive, it is necessary to immediately measure the temperature of the samples and confirm that the preservation temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature cannot be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature.

[17] Samples collected for the determination of trace level mercury (<100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. A sample collected for dissolved trace level mercury should be filtered in the laboratory within 24 hours of the time of collection. However, if circumstances preclude overnight shipment, the sample should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. If sample integrity will not be maintained by shipment to and filtration in the laboratory, the sample must be filtered in a designated clean area in the field within the time period necessary to maintain sample integrity. A sample that has been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

[18] Aqueous samples must be preserved at ≤6 °C, and should not be frozen unless data demonstrating that sample freezing does not adversely impact sample integrity is maintained on file and accepted as valid by the regulatory authority. Also, for purposes of NPDES monitoring, the specification of "≤°C" is used in place of the "4 °C" and "< 4 °C" sample temperature requirements listed in some methods. It is not necessary to measure the sample temperature to three significant figures (1/100th of 1 degree); rather, three significant figures are specified so that rounding down to 6 °C may not be used to meet the ≤6 °C requirement. The preservation temperature does not apply to samples that are analyzed immediately (less than 15 minutes).

[19] An aqueous sample may be collected and shipped without acid preservation. However, acid must be added at least 24 hours before analysis to dissolve any metals that adsorb to the container walls. If the sample must be analyzed within 24 hours of collection, add the acid immediately (see footnote 2). Soil and sediment samples do not need to be preserved with acid. The allowances in this footnote supersede the preservation and holding time requirements in the approved metals methods.

[20] To achieve the 28-day holding time, use the ammonium sulfate buffer solution specified in EPA Method 218.6. The allowance in this footnote supersedes preservation and holding time requirements in the approved hexavalent chromium methods, unless this supersession would compromise the measurement, in which case requirements in the method must be followed.

[21] Holding time is calculated from time of sample collection to elution for samples shipped to the laboratory in bulk and calculated from the time of sample filtration to elution for samples filtered in the field.

[22] Samples analysis should begin immediately, preferably within 2 hours of collection. The maximum transport time to the laboratory is 6 hours, and samples should be processed within 2 hours of receipt at the laboratory.

[23] For fecal coliform samples for sewage sludge (biosolids) only, the holding time is extended to 24 hours for the following sample types using either EPA Method 1680 (LTB–EC) or 1681 (A–1): Class A composted, Class B aerobically digested, and Class B anaerobically digested.

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

■ 3. The authority citation for Part 503 continues to read as follows:

Authority: Secs. 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345(d) and (e)); and Pub. L. 100–4, title IV, sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 et seq.).

■ 4. Section 503.8 is amended by revising paragraph (b) introductory text to read as follows:

§ 503.8 Sampling and analysis.

* * * * *

(b) *Methods.* The materials listed below are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the **Federal Register**. They are available for inspection at the HQ Water Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Copies may be obtained from the standard producer or publisher listed in the regulation. The methods in the materials listed below (or in 40 CFR Part 136) shall be used to analyze samples of sewage sludge.

* * * * *

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 342/P.L. 110–13

To designate the United States courthouse located at 555 Independence Street in Cape Girardeau, Missouri, as the "Rush Hudson Limbaugh, Sr. United States Courthouse". (Mar. 21, 2007; 121 Stat. 68)

H.R. 544/P.L. 110–14

To designate the United States courthouse at South Federal Place in Santa Fe, New Mexico, as the "Santiago E. Campos United States Courthouse". (Mar. 21, 2007; 121 Stat. 69)

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CFR CHECKLIST

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43–End	(869–060–00103–4)	60.00	July 1, 2006
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0–99	(869–060–00104–2)	50.00	July 1, 2006
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:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
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:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
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
53–59	(869–060–00142–5)	31.00	July 1, 2006
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
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
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
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
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
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
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
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
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	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
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600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
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50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
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17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
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	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
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[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 January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] 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.

[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, 2004 should be retained.

[8] 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.

[9] 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.

[10] 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.