AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

# Federal Register

4–26–06 Wednesday
Vol. 71 No. 80 Apr. 26, 2006

Pages 24551–24802

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# Rules and Regulations

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Chapter VII

### Federal Credit Union Bylaws

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of Federal Credit Union Bylaws.

**SUMMARY:** NCUA is adopting changes to update, clarify and simplify the Federal Credit Union (FCU) Bylaws. The changes eliminate unnecessary provisions and increase the readability of the Bylaws by adding staff commentary on frequently-asked questions, new section headings and increased use of plain English. FCUs who have previously adopted Bylaws may adopt these Bylaws in whole or in part, or they may retain their current Bylaws.

**DATES:** These Federal Credit Union Bylaws are effective April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On June 30, 2005, the Board issued a Notice and Request for comments on proposed revisions to the Federal Credit Union Bylaws (Proposal). 70 FR 40924 (July 15, 2005). The Proposal was developed after reviewing comments received in response to the Board's notice and request for comments on bylaw-related matters, issued September 23, 2004 (Request). 69 FR 58203 (Sept. 29, 2004). The Board received comments on the various issues raised in the Proposal as well as numerous other suggestions for improving the Bylaws and NCUA's process for issuing the Bylaws and reviewing amendments.

## B. Comments

*General*

NCUA received thirty comment letters in response to the Proposal. Fifteen federal credit unions, nine credit union trade organizations, three attorneys, one bank trade organization, one other organization, and one individual submitted comments. Most of the commenters praised NCUA's efforts to make the FCU Bylaws more understandable and many particularly expressed appreciation for the addition of section headings and staff commentary. Specific comments regarding the revisions and suggestions to alter other bylaw provisions are discussed below in the Article-by-Article Analysis.

*General Comments*

Several commenters repeated comments made in response to the Request. These commenters requested greater flexibility in the FCU Bylaws and argued the FCU Act only requires FCU incorporators to use bylaws prepared by NCUA and does not require FCUs to continue to use NCUA-approved Bylaws after incorporation. Five commenters questioned the level of detail NCUA currently uses in the FCU Bylaws and the need for NCUA to prepare a set of bylaws for use by all FCUs. Two commenters recommended allowing FCUs to draft their own bylaws and submit them to NCUA for approval. Three commenters suggested NCUA issue a regulation with general content guidelines for bylaws rather than form bylaws. Another commenter suggested maintaining a list of approved bylaws on the NCUA Web site and allowing FCUs to adopt bylaws from this list. Another commenter stated that many of the bylaw provisions could be eliminated as duplicative of the FCU Act and NCUA regulations.

Section 108 of the FCU Act requires NCUA to prepare form bylaws and to approve proposed bylaws before an FCU's charter is complete. The language of Section 108 is arguably subject to different interpretations. NCUA's longstanding position has been that Section 108 expresses a congressional desire for uniformity regarding FCU operations and member rights. *Rosenberg* v. *AT&T Employees FCU*, 726 F. Supp. 573, 578 (D.N.J. 1989). Accordingly, NCUA views Section 108 as providing authority to issue form bylaws that apply to all FCUs, not only newly chartered FCUs, and to review proposed bylaw amendments. NCUA also believes its responsibility to approve bylaws before an FCU can engage in business is given greater effect by its authority to issue form bylaws for all FCUs and review proposed bylaw amendments. Finally, NCUA's practices of issuing form FCU bylaws and reviewing proposed amendments parallel the Office of Thrift Supervision's practices related to thrift bylaws. *See* 12 CFR 552.6.

NCUA also believes there are several benefits to issuing FCU Bylaws for all FCUs. The form FCU Bylaws address the member protections the Act affords and function as a contract between the FCU and its members; the FCU Bylaws give members notice of their rights, particularly when they are unfamiliar with the FCU Act. The FCU Bylaws also ensure that all FCUs use essentially the same rules for governing themselves, consistent with the requirements and limitations in the Act. This uniformity enhances the significance of the federal charter and has the practical benefit of reducing the amount of examiner time spent reviewing bylaws. Finally, FCUs may request approval to amend their bylaws when appropriate on a case-by-case basis. The amendment process gives FCUs flexibility to adjust as necessary.

NCUA acknowledges that several Bylaw provisions repeat requirements of the Act or regulations. NCUA agrees that most requirements of the Act or regulations do not belong in the Bylaws and has eliminated unnecessary repetition. In examining Bylaw provisions that repeat statutory requirements, NCUA considered if officials, members and employees needed the information in the bylaw provision and if that information was accessible elsewhere. The statutory and regulatory provisions that remain serve to inform FCU officials, employees and members of important rights and responsibilities.

*Recommending Bylaw Charges To Address Charter Conversions*

Although the issue of conversion to other types of financial institution charters by FCUs was not part of the

Proposal, NCUA received a number of comments on this topic. Four commenters expressed concern about the ease with which credit unions can convert to other types of financial institutions, contending the end result of these conversions is that the equity that belongs to all credit union members is redistributed to insiders. Current law allows conversion based on a simple majority vote of credit union members voting. 12 U.S.C. 1785(b)(2)(B). The commenters voiced concern that members are often inadequately informed of their rights as credit union members and how conversion to another type of financial institution affects these rights.

These commenters suggested a variety of bylaw amendments designed to protect members' rights during the conversion process. Two commenters suggested allowing credit unions to set the percentage of members required to approve a conversion vote and prohibiting amendments to this provision without notice to members or another member vote. Two commenters specifically suggested the FCU Bylaws should require a vote of at least 50% of all members for conversion. One commenter also asked that the FCU Bylaws include easily adoptable check-off options for the conversion process that would: (1) Guarantee dissenting members the opportunity and means to discuss the conversion proposal; (2) authorize full or partial distribution of equity to dissenting voters after a conversion vote and ensure that members are informed of their right to apportionment of the equity after conversion; (3) permit only members with no conflict of interest to initiate the conversion process; and (4) allow credit unions to set a minimum percentage of member signatures required for a conversion petition.

While NCUA appreciates the commenters' concerns, these comments and recommendations are beyond the scope of the proposed amendments to the FCU Bylaws that the Board issued for public comment. Therefore, the Board will not consider adding these types of provisions either as a change to the form Bylaws or as options that FCUs could adopt. Nevertheless, the Board believes this is an area of internal governance, and the members, as the owners of an FCU, have an important stake in the voting requirements for such a fundamental change. The Board believes it is more appropriate for individual credit unions to consider how they want to address this issue and suggests that FCUs interested in including a bylaw provision related to conversion voting requirements should avail themselves of the process for seeking an amendment. In any case, proposed amendments cannot be inconsistent with the requirements of the FCU Act regarding conversions. The amendment process requires an FCU to request approval from its Regional Director and this process is now fully described in the Introduction to the FCU Bylaws the Board is adopting today.

**C. Article-by-Article Analysis of Comments**

*Introduction—Bylaw Amendment Process*

The Proposal included a revised introduction, which gave specific instructions on how FCUs may obtain bylaw amendments. NCUA recently received a request to clarify whether changes to provisions that include blanks for an FCU's board to fill in are considered bylaw amendments. The final version of the bylaws adds a new paragraph to the introduction clarifying that changes to ''fill-in-the-blank'' provisions are amendments to the bylaws and, as such, require a two-thirds vote of an FCU's board. The FCU need not, however, submit such changes to NCUA for approval, provided the change is within the range of permissible options.

*Article I, Section 2—Purposes*

One commenter suggested listing the unique characteristics of credit unions as set forth in the Credit Union Membership Access Act of 1998. The Board agrees that listing these characteristics is useful for FCU members, staff and officials and has added them to this section.

*Article II, Section 2—Membership Application Procedures*

The Proposal did not make any substantive changes to this section, which describes the requirements for joining an FCU. One commenter suggested deleting references to the uniform entrance fee and paying the initial share in installments. The FCU Act, however, requires a uniform entrance fee and allows the payment of the initial share in installments. 12 U.S.C. 1759(a). Reiterating these requirements in the Bylaws is useful for FCU staff and members. The same commenter also suggested that the requirement for the board to approve membership forms is outdated and not a proper board function. Because the board is responsible for the general direction and control of the credit union, it is appropriate to retain the requirement that the board approve membership application forms.

*Article II, Section 3—Maintenance of Membership Share Required*

One commenter found Sections 3 and 4 of Article II inconsistent, because Section 3 says members cease to be members if they fail to bring their account back to par value within the specified period, while Section 4 permits members to remain members until they choose to withdraw or are expelled. NCUA does not view these provisions as inconsistent. If members fail to bring their account back to par value within the time provided, they have also chosen to withdraw their membership.

One commenter stated it is unclear what actions constitute withdrawal and suggested it would be helpful to clarify what happens to joint account holders who fall below joint minimums of two times par value. The term withdrawal is self-explanatory, and joint account holders who draw down their account below the joint account par value should be treated like other members who draw down their accounts below par value.

*Article II, Section 4—Continuation of Membership*

The Proposal added a sentence to this section stating disruptive members may be subject to limitations on services and access to credit union facilities. Five commenters generally agreed including notice that credit unions may restrict service to disruptive members is an improvement. One of these five commenters requested more specific language, such as ''threatening or abusive,'' and one wanted to add that credit unions may restrict services to members who have caused a loss to the credit union. One commenter suggested deleting the proposed language regarding limiting service to disruptive members. This commenter stated credit unions are aware of this power, and including a bylaw provision will lead to debates with members over the meaning of the provision. The addition of the proposed language serves to remind members that they may not disrupt credit union operations and the term ''disruptive'' is sufficiently specific to give members this notice.

Another commenter noted it is unclear if an FCU that adds restrictions on services to members no longer within its field of membership (FOM), as permitted by the last sentence of Section 4, must submit these restrictions for NCUA's approval under the bylaw amendment process. FCUs that place restrictions on services to members no longer within the FOM may state these

restrictions in this section without submitting them for NCUA approval.

The same commenter deemed the expulsion and withdrawal provisions of this Article incomplete. The commenter suggested reorganizing these provisions and moving them to Article XIV so all provisions regarding member rights, responsibilities and qualifications are in one place. Article II, Section IV of the revised Bylaws now includes a reference to the complete expulsion provisions of Article XIV, and this reference is sufficient clarification.

*Article II—Staff Commentary*

One commenter disagreed with the commentary's repetition of the Act's requirement to charge a uniform entrance fee, saying his credit union wants authority to charge a lower entrance fee to minors. NCUA reiterates that, if FCUs charge an entrance fee, the FCU Act requires the fee to be the same for all members. 12 U.S.C. 1759(a).

*Article III, Section 1—Par Value*

One commenter suggested the reference to paying the initial share in installments is irrelevant and should be deleted. The FCU Act permits membership after the payment of an initial installment. 12 U.S.C. 1759(a). By way of historical background, from the 1930s until the mid 1980s, the FCU Bylaws set the par value at $5.00 and provided for installments of at least $.25 per month. Since the mid 1980s, the Bylaws have given FCUs flexibility in determining whether to permit payment of the initial share in installments by having a blank for the amount of the par value and a blank for the amount of installment payments to be made on a monthly basis. Thus, an FCU can, for example, can fill in the blank for the par value as $10.00 and also state that $10.00 is the amount of an installment, thus establishing that a series of installment payments will not be permitted but that payment of a full initial share is required for membership. To the extent that prior legal opinions have indicated that an FCU is required to permit payment of the initial share in installments, those opinions are superseded. Nevertheless, the comment demonstrates this provision should remain in the Bylaws for informational purposes.

*Article III, Section III—Time Periods for Payment and Maintenance of Membership Share*

Three commenters found this provision inconsistent with Article II, Section 2, because this provision says a member ''may'' be terminated for failing to maintain par value, while Article II, Section 2 says a member who fails to maintain par value ''ceases to be a member.'' NCUA agrees the word ''may'' in Article III, Section 3 is misleading, since FCU membership requires maintenance of the membership share, and has changed it to ''will.''

*Article III, Section 4—Transferability*

One commenter thought this section on transfers of shares between members unnecessary and said it reflects a reference to corporate law that is generally inapplicable to credit unions. While this issue may arise infrequently, it is important for members to know that any earned but uncredited dividends will transfer with transferred shares.

*Article III, Section 5—Withdrawals*

One commenter suggested Section 5 addresses issues covered by regulation and state laws and could be simplified. One commenter termed paragraphs (c), (d) and (e) operational issues that do not belong in the Bylaws. The Proposal eliminated paragraph (b) of Section 5, leaving paragraphs (a), (c), (d), and (e). NCUA has retained these provisions because they provide important information to FCU members and staff.

NCUA has retained paragraph (a), Which allows the board to require 60 days written notice before funds are withdrawn, because it is important for members to understand the board has this right. Paragraph (c), which prohibits delinquent borrowers from withdrawing funds below the amount of their liability without approval from the credit committee or loan officer, provides notice to members about a possible consequence of loan delinquency. Paragraph (d), as revised, eliminates the arbitrary 4-year cutoff for accounts of a deceased member and allows the account to continue until the administration of the estate is completed. Stating guidelines for handling the accounts of deceased members is useful to both credit union staff and members. Paragraph (e), which gives the board the right to impose a fee for excessive share withdrawals subject to other regulations requiring disclosure of account terms, also provides important information to members. In the interest of informing FCU members and staff about basic rights and responsibilities regarding withdrawals, NCUA is retaining these bylaw provisions at this time.

*Article III, Section 6—Trusts*

This section, which was unchanged by the Proposal, clarifies membership requirements for shares owned by trusts. Two commenters found this provision unnecessary. NCUA has retained this provision because it provides useful information to credit union staff and members.

*Article III, Section 7—Joint Accounts and Membership Requirements*

The Proposal included an option to permit FCUs to decide whether to allow joint account holders to be members without each opening a separate account. Five commenters supported the proposed option because it permits FCUs to determine how they want to institute their membership policies and manage their accounts. One commenter opposed the change and said joint account holders should not be permitted to become members without opening a separate account. One commenter suggested the meaning of the terms ''joint membership'' and ''primary owner'' are unclear and suggested the option refer only to the ''sole owner.'' This same commenter noted the Section fails to disclose the requirements for membership and the consequences of not being a member.

NCUA has not changed the language from the Proposal. The commenter who opposed allowing joint account holders to become members without opening a separate account is free to encourage her FCU's board to choose that option. NCUA disagrees that the term ''joint membership'' is unclear, since the remainder of the sentence spells out the requirements for joint membership. Further, retaining the term ''primary owner'' is necessary because a joint account owner opening a separate account to establish membership may also want to open a joint account. Finally, information on membership requirements and the consequences of not being a member are available elsewhere in the Bylaws.

*Article IV, Section 1—Annual Meeting*

The Proposal amended Section 1 to delete the requirement that the annual meeting be held ''within the period authorized by the Act'' because the Act no longer specifies a time period for holding the annual meeting. Instead, the Proposal added a blank space for an FCU to insert the time period of its annual meeting in order to give members notice of the time frame for the annual meeting.

Two commenters supported the Proposal's addition of a blank space for the board to fill in the date of the annual meeting. One commenter found the blank space ''too restrictive'' and proposed substituting ''no later than May 31 (or June) of each year.'' The last commenter misinterpreted the effect of the amendment, which allows an FCU to insert the approximate time of its

annual meeting and does not dictate a specific time period. NCUA clarifies that the examples of meeting dates listed in the instruction are examples, and the credit union may insert other dates if it prefers to have its annual meeting at other times of the year. FCUs should strive to be as specific as possible in listing the date of its meeting in the interests of providing this information to members.

*Article IV, Section 2—Notice of Meetings Required*

One commenter requested amendments to Section 2 to permit electronic notice of meetings to members who have opted to receive other credit union information electronically. NCUA agrees that FCUs should be able to notify members of meeting electronically if members prefer this method of notification. Accordingly, this section, as amended, permits electronic notice of meetings if a member has affirmatively consented to receive notices and statements electronically.

*Article IV, Section 3—Special Meetings*

One commenter stated requiring 30 days notice for a special meeting is inconsistent with the requirement that the supervisory committee call a special meeting within 7 to 14 days after the suspension of a director, officer or member, as provided in Article IX, Section 5. The commenter appears to be confusing the notice requirement for a special meeting, which is 7 days, with the requirement that the board chair call a special meeting within 30 days of receiving a written request from the greater of 25 members or 5% of the members. Because the required notice for a special meeting is 7 days, there is no conflict with the requirement to call a special meeting within 7 to 14 days after the suspension of a director, officer or member.

The Proposal increased the maximum number of member signatures required to call a special meeting from 500 to 750. Three commenters opposed this change and asked that the maximum number of members required to request a special meeting remain at 500. Two commenters supported the change. Ten commenters favored an increase; one of these commenters also suggested increasing the maximum number to 1000 while the other nine commenters suggested a cap based on a percentage of total members without an absolute numerical cap. Another commenter requested the Bylaws impose a time limit for collecting the signatures for a special meeting petition, such as 60 days.

The final bylaw revisions include the provision increasing the maximum number of signatures required to call a special meeting to 750. In practice, this increase in the cap means that for credit unions with 15,000 or more members, the maximum number of signatures required on a special meeting request is 750. For smaller credit unions, the number of signatures required on a special meeting request is 5% of members or 25 members, whichever is greater. The Board believes this increase is appropriate, because, unlike nominations by petition, there is no time limit for obtaining the requisite number of signatures. Special meetings are expensive and time-consuming to conduct. Increasing the limit will ensure special meetings are called only when an issue is of interest to a broad group of FCU members, but the increase is not so high it will prevent members from obtaining a special meeting.

The final bylaw revisions also include edits to the second sentence of this section to clarify that, if members obtain the requisite number of signatures on a special meeting request, the meeting must be held within 30 days. NCUA was recently asked if the phrase ''a special meeting must be called by the chair within 30 days'' means that the meeting must occur within 30 days. The FCU Bylaws track the FCU Act and NCUA regulations in using the terms ''call'' and ''hold'' interchangeably. For example, the provisions of the FCU Act and NCUA regulations allowing NCUA to appoint FCU directors to replace suspended directors provides that the temporary directors must ''call'' a special meeting within thirty days after their appointment, unless the FCU's regular annual meeting is scheduled within that period or the suspensions resulting in the appointment of temporary directors are terminated. 12 U.S.C. 1786(i)(2); 12 CFR 747.302. Similarly, NCUA's merger regulation allows members of a merging FCU to vote on the merger proposal at a special meeting ''to be called within 60 days of NCUA approval'' unless the FCU's annual meeting is scheduled within 60 days after NCUA approval. 12 CFR 708b.106(1). These provisions use the term ''call,'' but, because the special meeting need not be called if the annual meeting is scheduled within the prescribed period, the term ''call'' means the special meeting must be held within the prescribed period. Accordingly, the final bylaw revisions now clarify the requirement to ''call'' a special meeting within 30 days means the meeting must occur within 30 days.

*Article IV, Section 4—Items of Business for Annual Meeting*

The Proposal included a new sentence at the end of Section 4 to notify members of the rules of order or procedure the FCU will use when conducting member meetings. 70 FR 40926–27 (July 15, 2005). Members are entitled to know which rules will govern the process for conducting the meeting and making decisions. FCU members may make a motion for member action if the Act has entrusted members with such action. *Id.* Members may also make a motion for a member vote to recommend Board action on other matters. *Id.*

Five commenters supported listing the rules of order an FCU uses. Another commenter suggested that, while adopting a particular set of rules will provide further guidance, most rules of order will be inadequate because of credit unions' unique nature. While the Board agrees credit unions are different from corporate and parliamentary bodies for which most rules of order are devised, it finds sufficient parallels to make the selection and use of rules of order useful to members.

Four commenters—one banking trade group, one state credit union and two charter conversion proponents—opposed the addition of the rules of order provision because they believe it would allow all member motions to be heard. These commenters contended allowing all motions to be heard would exceed members' statutory authority and increase annual meeting costs and time. One of these commenters stated it is not clear what actions the FCU Act entrusts to members and allowing matters to come up for the first time at a meeting would not give members notice of issues possibly under discussion. Two other commenters, while not expressing direct opposition, found the rules of order provision vague and possibly subject to misinterpretation.

Commenters opposed to the rules of order provision misread the authority it gives to members. Members may only make motions for action by the membership on issues where they have authority to act. The FCU Bylaws provide only for members to vote for the election of directors, the removal of directors and committee members, and the expulsion of members. FCU Bylaws, Articles IV, XIV, XVI. Although not addressed in the FCU Bylaws, the FCU Act and NCUA regulations establish the member's right to vote on the following matters:

- Conversion to state charter, 12 U.S.C. 1771;

• Conversion to mutual savings bank, 12 U.S.C. 1785;
• Conversion to private insurance, 12 U.S.C. 1786; and
• Merger where an FCU is acquired, 12 CFR 708b.106.

Accordingly, members may make motions calling for a member vote only if the motions relate to the issues noted here.

Nevertheless, and in addition, members may make other advisory motions requesting an FCU's board to take a specific action on other topics. If a member has followed the rules of order chosen by an FCU and moves for a membership recommendation to the board, the chair must recognize the motion even though the board is not bound to adopt the recommendation. Member participation in the governance of an FCU will be enhanced by the rules of order provision, which will serve to inform members of their right to be heard on fundamental issues affecting them. Accordingly, the Board adopts this Section as proposed.

The Proposal also added the Community Development Revolving Loan Program's requirement of a report to members on providing needed community services to the report of directors section. One commenter said this addition was better addressed in a regulation. This requirement is addressed in NCUA's regulations, but NCUA added it to the Bylaws to inform members this may be a requirement for credit unions participating in the Community Development Revolving Loan Program. To accommodate potential revisions to the Revolving Loan Program regulation, the final bylaw is revised to state that the report to members is required if the Revolving Loan Program requires it.

One commenter suggested creating separate sections for annual and special meetings. Another commenter suggested it was unclear if the rule of order provision applies to special meetings since the heading for Section 4 includes only annual meetings. The Section heading for Section 4 has been changed to ''Items of business for annual meeting and rules of order for annual and special meetings.''

*Article IV, Section 5—Quorum*

Two commenters stated that requiring only 15 members for a quorum for an annual or special meeting potentially allows an inappropriately small number of members to wield disproportionate influence. One of these commenters suggested allowing credit unions to choose a number for a quorum between 15 and 100, while the other commenter stated credit unions should be able to set their own quorum level. Because one way to expel members is by holding a special meeting, and it is often difficult for credit union managers to get 15 members to attend an expulsion meeting, NCUA has retained the quorum of 15 for the standard Bylaws. NCUA will consider requests for individual bylaw amendments to increase this number.

*Article V, Options A2–A4, Section 1—Nomination Procedures*

One commenter suggested allowing FCUs to deliver the notice regarding the nominating committee's nominees and nominations by petition electronically, for those members who consent, in Options A2 and A3. The Proposal added the option of delivering these notices electronically in Option A4. NCUA agrees that FCUs may deliver this notice electronically to members who consent regardless of which election option the FCU uses. The final version of the Bylaws revises Section 1 of Options A2 and A3 to allow electronic delivery of this notice.

The Proposal retained the current bylaw provision allowing members to petition to run for board seats by obtaining the signatures of 1% of members with a minimum of 20 and a maximum of 500. Four commenters requested changes to the 500 signature cap. Two suggested eliminating the maximum and requiring the signatures of a straight percentage of the membership regardless of the credit union's size. Another commenter suggested changing the provision to require the signatures of 750 members, or 0.5% of members, whichever is greater. Another commenter suggested increasing the cap to 750 signatures.

The Board believes that eliminating or increasing the 500 signature cap would make it too difficult for members of larger credit unions to be nominated by petition. Because the membership of many FCUs is geographically dispersed and many members transact much of their business electronically, the requirement to obtain at least 500 signatures is a significant hurdle to a member seeking nomination. Also, members seeking nomination by petition have only the time between mailing of the written notice to members that nominations for vacancies may be made by petition and 40 days before the annual meeting, which may be as few as 30 days. After considering these factors, the Board declines to increase the 500 signature maximum.

*Article V, Option A4, Section 2(c)(2)—Election Procedures*

The Proposal added a requirement to include a mail ballot with electronic election procedure instructions, rather than require a member without the requisite electronic device to request a ballot. Two commenters supported this change. Twelve commenters opposed placing this requirement in the Bylaws. Some commenters found the change unnecessary because members can request the mail ballot. They stated that FCUs should have the option of changing their policies. Others stated the proposal would defeat the purpose of electronic ballots.

Several of the commenters suggested other alternatives to requiring an FCU to mail a paper ballot to all members. Two commenters suggested FCUs be allowed to omit the paper ballot for members who have agreed to receive electronic ballots and another commenter suggested FCUs be allowed to omit the paper ballot for members who have agreed to receive statements and notices electronically. Another commenter suggested allowing members to request a paper ballot by phone and require earlier notice to members of alternatives to electronic voting.

The Board continues to believe members who lack access to electronic devices should be provided paper ballots without having to make a separate request. NCUA's examiners and regional offices initially suggested the paper ballot requirement, because they had concerns that members who have to take additional steps to vote are less likely to do so. The Board agrees with the suggestion that FCUs should not be required to send paper ballots to members who receive other credit union communications electronically. The final bylaw does not require inclusion of a mail ballot with electronic election procedure instructions for members who have chosen to receive other credit union communications electronically.

*Article V, Option A4, Section 2(d)(1)—Election Procedures*

The Proposal changed the requirement that the order of names on ballots be determined by the drawing of lots. The proposed bylaw instead required that names be in some random order, and the staff commentary to this section noted that the randomizing procedure should be consistent from year to year to avoid favoritism. One commenter said the bylaw provision should be consistent with the staff commentary allowing any random order, instead of requiring names to be ordered by the drawing of lots. NCUA

confirms that the bylaw does not require ordering names by the drawing of lots.

*Article V, Section 7—Minimum Age Requirement*

The current version of the Bylaws requires a board to establish the minimum age for eligibility to vote by a separate board resolution. In the interests of providing as much useful information as possible to members in the Bylaws, the Proposal replaced this provision with a blank space for the board to fill in. Five commenters supported this change. Two of these five commenters, however, suggested NCUA amend the provision or provide guidance to clarify that the age the board selects may not be greater than 18, or the age of majority under state law. This is a useful clarification and it has been added as an item in the staff commentary to Article V.

One commenter also suggested allowing credit unions to establish reasonable cut-off dates before the election for purposes of determining eligibility to vote. Because it would be difficult to establish a cut-off time frame that works for all credit unions, this provision is not included this provision. Individual bylaw amendment requests will be considered as necessary. Another commenter suggested adding provisions allowing a credit union to bar members who have caused a loss or have been disruptive from voting. These provisions are impermissible under the FCU Act, which gives members the right to vote as long as they are members. 12 U.S.C. 1760.

*Article V, Section 8—Absentee Ballots*

One commenter suggested the Bylaws should allow members to request and submit absentee ballots by electronic means. NCUA agrees and has added a new paragraph to the end of this section to clarify that members who have chosen to receive notices and statements electronically may obtain ballots and vote by electronic means. Paragraphs (b) and (c) of this section are revised to clarify that members may request absentee ballots by electronic means.

*Article V—Staff Commentary*

One commenter suggested the commentary clarify that director candidates must be ''members in good standing'' and be ''bondable.'' As discussed in the commentary section titled ''Eligibility Requirements,'' the FCU Act provides the only requirements for director candidates. NCUA regulations require bond coverage for all directors. 12 CFR 713.3(b). Whether a director candidate is ''bondable'' may not be apparent before the application for bond coverage, and so this requirement would be impossible to enforce for director candidates. Elected directors may not be seated as directors unless they qualify for bond coverage, but neither the FCU Act nor NCUA's regulations prevent those who might not qualify from being candidates.

*Article VI, Section 2—Composition of Board*

One commenter asked that this provision clarify that an FCU may fill in ''none'' for the number of paid employees or family members who can serve on the board. NCUA agrees this clarification would be useful and has changed the parenthetical instruction after the blank space from ''Fill in the number'' to ''Fill in the number, which may be zero'' in the final version of the Bylaws.

*Article VI, Section 4—Vacancies*

The Proposal replaced the current requirement that vacancies on the board be filled within a ''reasonable time'' with a requirement that vacancies be filled as soon as possible but no later than the next regularly scheduled board meeting. Twenty commenters opposed this change. Most expressed concern that imposing an arbitrary deadline would hamper efforts to identify the best-qualified candidates. Several of the objectors also noted this deadline would be impossible to meet if a vacancy occurred immediately before a scheduled board meeting. Eight of the commenters preferred to have no absolute deadline. Other suggestions for the deadline included a blank for the credit union to fill in or a range of 30 to 180 days.

The Board believes it is crucial for FCUs to appoint members to fill vacant board spots quickly, but appreciates the requirement that vacancies be filled no later than the next regularly scheduled board meeting may be too rigid a requirement. Instead, the final version of the Bylaws will require board vacancies to be filled ''as soon as possible.''

*Article VI, Section 6—Board Responsibilities*

The Proposal added a requirement that FCU boards establish a policy to address training for board members and other volunteers in areas including ethics and fiduciary responsibility, regulatory compliance and accounting. Two commenters supported the inclusion of the training requirement, noting it would enhance director knowledge and make members aware of directors' duties. Five commenters opposed the requirement or questioned its placement in the Bylaws, arguing it would make finding volunteers more difficult. One of those opposed also noted that including a training requirement in the Bylaws could lead to unproductive ''second guessing'' by examiners. The Board believes the training requirement will assist board members in carrying out their duties and make service on an FCU board more attractive, not less so. Accordingly, the final version of the Bylaws includes the training policy requirement.

*Article VII, Section 2—Election and Term of Office*

The Proposal sought comment on whether requiring a board to conduct its organizational meeting within seven days of the annual meeting was too onerous. NCUA received only four comments on this matter and the comments were divided. The Board has retained the seven-day deadline in the final version of the Bylaws, but FCUs may consider requesting individual bylaw amendments if necessary to lengthen this period.

*Article VII, Section 4—Approval Required*

The Proposal did not amend this section, which requires the board to approve all individuals authorized to issue orders for disbursement of funds. One commenter found this provision unclear and termed it an operational matter that does not belong in the Bylaws. The FCU Act requires boards to provide fidelity coverage for officers and employees having custody of or handling funds. 12 U.S.C. 1761b(2). Retaining this section of the Bylaws provides useful information to an FCU's board about its responsibilities under the Act.

*Article VII, Section 6—Duties of Financial Officer*

The Proposal retained the current requirement for credit unions to post monthly financial statements in a conspicuous place in the credit union's office. Three commenters supported continuing this requirement, with one commenter saying each credit union should be allowed to determine what constitutes a conspicuous place and manner of posting, such as the credit union's Web site. One commenter found this requirement outdated and suggested its removal. The Board agrees with the majority of commenters that actual posting of the monthly financial statement provides useful information to members and this requirement remains in the Bylaws.

*Article VII, Section 8—Board Powers Regarding Employees*

The Proposal did not substantively amend this section, which recognizes the board's power to hire, compensate and fire employees or delegate this function to the financial officer or management official. One commenter suggested deleting this section and allowing each credit union to determine its own policies. NCUA has retained this provision because it provides useful information to FCU officials and staff.

*Article VII, Section 10—Executive Committee*

The Proposal amended this section to clarify that the FCU Act permits boards to appoint executive committees and requires specificity in these delegations. These changes were made after reviewing comments on the Request. One commenter stated it is unnecessary to require that the board be specific about the executive committee's duties and stated this provision could be construed as requiring limits on a delegation. FCU boards should be as specific as possible when delegating their responsibilities to executive committees.

*Article VIII, Option 1, Section 4 and Option 2, Section 1—Credit Committee/Loan Officers*

This section repeats the FCU Act's prohibition on loan officers disbursing funds for loans that they have approved. 12 U.S.C. 1761c(b). One commenter suggested making this an optional bylaw provision, but repeating the statutory prohibition provides useful information to FCU officials, staff and members.

*Article IX, Section 1—Supervisory Committee*

The Proposal amended Section 1 to prohibit the compensated officer and the financial officer from serving on the supervisory committee. Three commenters expressed support for this change, and the amended language is included in the final version of the Bylaws.

*Article XI, Section 2—Delinquency*

The Proposal did not amend this section, which allows the board to impose late charges for delinquent loans. One commenter termed this an operational issue that should be deleted from the Bylaws. While treatment of delinquent loans is no doubt covered in more detail in loan agreements between a member and an FCU, repetition of the basic concept that delinquency may result in late fees is helpful to some members and has been retained.

*Article XIII—Deposit of Funds*

This section is deleted from the final version of the Bylaws, as proposed. NCUA believes this article is obsolete because FCUs should be able to deposit funds properly without guidance in the FCU Bylaws.

*Article XIV, Section 1—Expulsion and Withdrawal*

The Proposal expanded Section 1 by including the two methods to expel a member under the FCU Act. One commenter specifically supported this change and the final version of the Bylaws includes the change as proposed.

*Article XV—Minors*

The Proposal retained the provision allowing shares to be issued in the name of a minor and added language clarifying that state law governs transactions between FCUs and minors. One commenter agreed that including this information is useful to members and the final version of the Bylaws includes this clarification.

*Article XVIII, Section 1—Definitions*

The Proposal deleted the definitions of ''household'' and ''organizations of such persons'' and moved the definition of ''immediate family member'' to Section 1 of this Article. One commenter noted the Bylaws should include definitions of ''organizations of such persons'' and ''immediate family member'' because the Bylaws are more accessible than the Field of Membership Manual. NCUA clarifies that the definition of immediate family member remains in the bylaws, and that the term is only used in Article VI, Section 2, which allows an FCU to restrict the number of immediate family members of paid employees on the board. Upon consideration, NCUA believes that its instruction for this section permitting an FCU to insert a more restrictive definition of ''immediate family member'' or ''household'' for field of membership purposes is confusing, and has deleted this instruction from the final version of the bylaws. A member who desires more precise information about the FCU's field of membership can obtain it from other readily accessible sources, such as the FCU's Web site or advertising materials, so the bylaws do not need to address field of membership information.

By the National Credit Union Administration Board on April 20, 2006.

**Mary F. Rupp,**

*Secretary of the Board.*

## The Federal Credit Union Bylaws

*Introduction*

*Effective date.* After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these bylaws on _____. Unless a federal credit union has adopted bylaws before _____, it must adopt these revised bylaws.

*Adoption of all or part of these bylaws.* Although federal credit unions may retain any previously approved version of the bylaws, the NCUA Board encourages federal credit unions to adopt the revised bylaws because it believes they provide greater clarity and flexibility for credit unions and their officials and members. Federal credit unions may also adopt portions of the revised bylaws and retain the remainder of previously approved bylaws, but the NCUA Board cautions federal credit unions to be extremely careful. Federal credit unions must be careful because they run the risk of having inconsistent or conflicting provisions because of the various options the revised bylaws provide as well as other revisions in the text.

*Bylaw amendments.* The FCU Bylaws contain several provisions allowing FCU boards to select from an option or range of options and fill in a blank. Changes to ''fill-in-the-blank'' provisions are, in fact, changes to the FCU's bylaws and require a two-thirds vote of the board. As long as the FCU selects from the permissible options for completing the blank, the FCU need not submit the change for NCUA approval using the process outlined below.

Federal credit unions continue to have the flexibility to request other bylaw amendments if the need arises. NCUA must approve any bylaw amendments; federal credit unions may no longer adopt amendments from the ''Standard Bylaw Amendments'' booklet because the 1999 revisions to the bylaws included sufficient flexibility to make the separate list of standard bylaw amendments superfluous. Thus, NCUA no longer differentiates between ''standard'' and ''nonstandard'' bylaw amendments.

The procedure for approval of bylaw amendments is as follows:

- The federal credit union wishing to adopt a bylaw amendment must file a request with its regional director.
- The request must include the section of the bylaws to be amended; the reason for or purpose of the amendment,

including an explanation of why the amendment is desirable and what it will accomplish for the credit union; and the specific, proposed wording of the amendment.

- After review by the regional director and consultation within the agency, the regional director will advise the credit union if a proposed amendment is approved.

Federal credit unions considering an amendment may find it useful to review the section of the agency Web site on bylaws that has opinions issued by the Office of General Counsel about particular bylaw amendments. Even if an amendment has been previously approved, the credit union must submit a proposed amendment to NCUA for review under the procedure listed above to ensure the amendment is identical.

*The nature of the bylaws.* The Federal Credit Union Act requires the NCUA Board to prepare bylaws for federal credit unions. 12 U.S.C. 1758. The bylaws address a broad range of matters concerning a credit union's organization and governance, the relationship of the credit union to its members, and the procedures and rules a credit union follows. The bylaws supplement the broad provisions of: A federal credit union's charter, which establishes the existence of a federal credit union; the Federal Credit Union Act, which establishes the powers of federal credit unions; and NCUA regulations, which implement the Federal Credit Union Act. As a legal matter, a federal credit union's bylaws must conform to and cannot be inconsistent with any provision of its charter, the Federal Credit Union Act, NCUA regulations or other laws or regulations applicable to its operations.

NCUA's long standing view is the bylaws, among other effects, function as a contract between a credit union and its members. While NCUA provides guidance and interpretations of the bylaws, generally state corporate law, to the extent it is consistent with the Federal Credit Union Act and NCUA regulations, determines disputes regarding the enforcement of bylaw provisions. Therefore, NCUA generally does not become involved in resolving internal governance disputes in federal credit unions involving bylaw disputes unless a matter presents a safety and soundness concern.

**Bylaws**

Federal Credit Union, Charter No. _____

(A corporation chartered under the laws of the United States)

**Article I. Name—Purposes**

Section 1. Name. The name of this credit union is as stated in Section 1 of the charter (approved organization certificate) of this credit union.

Section 2. Purposes. This credit union is a member-owned, democratically operated, not-for-profit organization managed by a volunteer board of directors, with the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. The purpose of this credit union is to promote thrift among its members by affording them an opportunity to accumulate their savings and to create for them a source of credit for provident or productive purposes. *The credit union may add business as one of its purposes by placing a comma after ''provident'' and inserting ''business.''*

**Article II. Qualifications for Membership**

Section 1. Field of membership. The field of membership of this credit union is limited to that stated in Section 5 of its charter.

Section 2. Membership application procedures. Applications for membership from persons eligible for membership under Section 5 of the charter must be signed by the applicant on forms approved by the board. The applicant is admitted to membership after approval of an application by a majority of the directors, a majority of the members of a duly authorized executive committee, or by a membership officer, and after subscription to at least one share of this credit union and the payment of the initial installment, and the payment of a uniform entrance fee if required by the board. If a person whose membership application is denied makes a written request, the credit union must explain the reasons for the denial in writing.

Section 3. Maintenance of membership share required. A member who withdraws all shareholdings or fails to comply with the time requirements for restoring his or her account balance to par value in Article III, Section 3, ceases to be a member. By resolution, the board may require persons readmitted to membership to pay another entrance fee.

Section 4. Continuation of membership. Once a member becomes a member that person may remain a member until the person or organization chooses to withdraw or is expelled in accordance with the Act and Article XIV of these bylaws. A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities. *A credit union that wishes to restrict services to members no longer within the field of membership should specify the restrictions in this section.*

Staff commentary on qualifications for membership:

*Entrance fee*—FCUs may not vary the entrance fee among different classes of members because the Act requires a uniform fee. FCUs may, however, eliminate the entrance fee for all applicants.

**Article III. Shares of Members**

Section 1. Par value. The par value of each share will be $_____. Subscriptions to shares are payable at the time of subscription, or in installments of at least $_____ per month.

Section 2. Cap on shares held by one person. The board may establish, by resolution, the maximum amount of shares that any one member may hold.

Section 3. Time periods for payment and maintenance of membership share. A member who fails to complete payment of one share within _____ of admission to membership, or within _____ from the increase in the par value of shares, or a member who reduces the share balance below the par value of one share and does not increase the balance to at least the par value of one share within _____ of the reduction will be terminated from membership.

Section 4. Transferability. Shares may only be transferred from one member to another by an instrument in a form as the board may prescribe. Shares that accrue credits for unpaid dividends retain those credits when transferred.

Section 5. Withdrawals. Money paid in on shares or installments of shares may be withdrawn as provided in these bylaws or regulation on any day when payment on shares may be made, provided, however, that

(a) The board has the right, at any time, to require members to give up to 60 days written notice of intention to withdraw the whole or any part of the amounts paid in by them.

(b) Reserved.

(c) No member may withdraw any shareholdings below the amount of the member's primary or contingent liability to the credit union if the member is delinquent as a borrower, or if borrowers for whom the member is comaker, endorser, or guarantor are delinquent, without the written

approval of the credit committee or loan officer. Coverage of overdrafts under an overdraft protection policy does not constitute delinquency for purposes of this paragraph. Shares issued in an irrevocable trust as provided in Section 6 of this article are not subject to withdrawal restrictions except as stated in the trust agreement.

(d) The share account of a deceased member (other than one held in joint tenancy with another member) may be continued until the close of the dividend period in which the administration of the deceased's estate is completed.

(e) The board will have the right, at any time, to impose a fee for excessive share withdrawals from regular share accounts. The number of withdrawals not subject to a fee and the amount of the fee will be established by board resolution and will be subject to regulations applicable to the advertising and disclosure of terms and conditions on member accounts.

Section 6. Trusts. Shares may be issued in a revocable or irrevocable trust, subject to the following:

When shares are issued in a revocable trust, the settlor must be a member of this credit union in his or her own right. When shares are issued in an irrevocable trust, either the settlor or the beneficiary must be a member of this credit union. The name of the beneficiary must be stated in both a revocable and irrevocable trust. For purposes of this section, shares issued pursuant to a pension plan authorized by the rules and regulations will be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

Section 7. Joint accounts and membership requirements. Select one option and check the box corresponding to that option.

____ *Option A—Separate Account Not Required To Establish Membership*

Owners of a joint account may both be members of the credit union without opening separate accounts. For joint membership, both owners are required to fulfill all of the membership requirements including each member purchasing and maintaining at least one share in the account.

____ *Option B—Separate Account Required To Establish Membership*

Each member must purchase and maintain at least one share in a share account that names the member as the sole or primary owner. Being named as a joint owner of a joint account is insufficient to establish membership.

Staff commentary on shares:

*Installments*—FCUs may insert zero for the number of installments. The FCU Act allows membership upon the payment of the initial installment of a membership share, but NCUA no longer views this provision as requiring FCUs to offer the option of paying for the membership share in installments.

*Par value*—FCUs may establish differing par values for different classes of members or types of accounts, provided this action does not violate any federal, state or local antidiscrimination laws. For example, an FCU may want to establish a higher par value for recent credit union members, without requiring long-time members to bring their accounts up to the new par value. A differing par value may also be permissible for different types of accounts, such as requiring a higher par value for a member with only a share draft account. If a credit union adopts differing par values, all of the possible par values should be stated in Section 1.

*Reduction in share balance below par value*—When a member's account balance falls below the par value, Section 3 requires FCUs to allow members a minimum time period to restore their account balance to the par value before membership is terminated. FCUs may not delete this requirement or delete references to this requirement in Article II, Section 3.

**Article IV. Meetings of Members**

Section 1. Annual meeting. The annual meeting of the members must be held [insert time for annual meeting, for example, ''during the month of March/ on the third Saturday of April/ no later than March 31''], in the county in which any office of the credit union is located or within a radius of 100 miles of an office, at the time and place as the board determines and announces in the notice of the annual meeting.

Section 2. Notice of meetings required. At least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members, the secretary must give written notice to each member. Notice may be by written notice delivered in person or by mail to the member's address, or, for members who have opted to receive statements and notices electronically, by electronic mail. Notice of the annual meeting may be given by posting the notice in a conspicuous place in the office of this credit union where it may be read by the members, at least 30 days before the meeting, if the annual meeting is to be held during the same month as that of the previous annual meeting and if this credit union maintains an office that is readily accessible to members where regular business hours are maintained. Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members entitled to vote, who are not present at the meeting, waive notice in writing, before, during, or after the meeting.

Notice of any special meeting must state the purpose for which it is to be held, and no business other than that related to this purpose may be transacted at the meeting.

Section 3. Special meetings. Special meetings of the members may be called by the chair or the board of directors upon a majority vote, or by the supervisory committee as provided in these bylaws. The chair must call a special meeting, meaning the meeting must be held, within 30 days of the receipt of a written request of 25 members or 5% of the members as of the date of the request, whichever number is larger. However, a request of no more than 750 members may be required to call a special meeting.

The notice of a special meeting must be given as provided in Section 2 of this article. Special meetings may be held at any location permitted for the annual meeting.

Section 4. Items of business for annual meeting and rules of order for annual and special meetings. The suggested order of business at annual meetings of members is—

(a) Ascertainment that a quorum is present.

(b) Reading and approval or correction of the minutes of the last meeting.

(c) Report of directors, if there is one. For credit unions participating in the Community Development Revolving Loan Program, the directors must report on the credit union's progress on providing needed community services, if required by NCUA Regulations.

(d) Report of the financial officer or the chief management official.

(e) Report of the credit committee, if there is one.

(f) Report of the supervisory committee, as required by Section 115 of the Act.

(g) Unfinished business.

(h) New business other than elections.

(i) Elections, as required by Section 111 of the Act.

(j) Adjournment.

To the extent consistent with these bylaws, all meetings of the members will be conducted according to _____. The order of business for the annual meeting may vary from the suggested order, provided it includes all required items and complies with the

rules of procedure adopted by the credit union.

*The credit union must fill in the blank with one of the following authorities, noting the edition to be used: Democratic Rules of Order, The Modern Rules of Order, Robert's Rules of Order, or Sturgis' Standard Code of Parliamentary Procedure.*

Section 5. Quorum. Except as otherwise provided, 15 members constitute a quorum at annual or special meetings. If no quorum is present, an adjournment may be taken to a date at least 7 but not more than 14 days thereafter. The members present at any adjourned meeting will constitute a quorum, regardless of the number of members present. The same notice must be given for the adjourned meeting as is prescribed in Section 2 of this article for the original meeting, except that the notice must be given at least 5 days before the date of the meeting as fixed in the adjournment.

**Article V. Elections**

*The Credit Union must select one of the four voting options. This may be done by printing the credit union's bylaws with the option selected or retaining this copy and checking the box of the option selected. All options continue with Section 3 of this article.*

____ *Option A1—In-Person Elections; Nominating Committee and Nominations From Floor*

Section 1. Nomination procedures. At least 30 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

Section 2. Election procedures. After the nominations of the nominating committee have been placed before the members, the chair calls for nominations from the floor. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for the office.

____ *Option A2—In-Person Elections; Nominating Committee and Nominations by Petition*

Section 1. Nomination procedures. At least 120 days before each annual meeting the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date that the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. Election procedures. All persons nominated by either the nominating committee or by petition must be placed before the members. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for each position to be filled.

If sufficient nominations are made by the nominating committee or by petition to provide at least as many nominees as positions to be filled, nominations cannot be made from the floor. In the event nominations from the floor are permitted and result in more nominees than positions to be filled, when nominations have been closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. When the number of nominees equals the number of positions to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

____ *Option A3—Election by Ballot Boxes or Voting Machine; Nominating Committee and Nomination by Petition*

Section 1. Nomination procedures. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by

petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. Election procedures. All elections are determined by plurality vote. The election will be conducted by ballot boxes or voting machines, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 10 days before the annual meeting, will cause ballot boxes and printed ballots, or voting machines, to be placed in conspicuous locations, as determined by the board of directors with the names of the candidates posted near the boxes or voting machines. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(c) After the members have been given 24 hours to vote at conspicuous locations as determined by the board of directors, the ballot boxes or voting machines will be opened, the vote tallied by the tellers, the tallies placed in the ballot boxes, and the ballot boxes resealed. The tellers are responsible at all times for the ballot boxes or voting machines and the integrity of the vote. A record must be kept of all persons voting and the tellers must assure themselves that each person voting is entitled to vote; and

(d) The tellers will take the ballot boxes to the annual meeting. At the annual meeting, printed ballots will be distributed to those in attendance who have not voted and their votes will be deposited in the ballot boxes placed by the tellers, before the beginning of the meeting, in conspicuous locations with the names of the candidates posted near them. After those members have been given an opportunity to vote at the annual meeting, balloting will be closed, the ballot boxes opened, the vote tallied by the tellers and added to the previous count, and the chair will announce the result of the vote.

____ *Option A4—Election by Electronic Device (Including But Not Limited to Telephone and Electronic Mail) or Mail Ballot; Nominating Committee and Nominations by Petition*

Section 1. Nomination procedures. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

The notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. Election procedures. All elections are determined by plurality vote. All elections will be by electronic device or mail ballot, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 30 days before the annual meeting, will cause either a printed ballot or notice of ballot to be mailed to all members eligible to vote. Electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically;

(c) If the credit union is conducting its elections electronically, the secretary will cause the following materials to be transmitted to each eligible voter and the following procedures will be followed:

(1) One notice of balloting stating the names of the candidates for the board of directors and the candidates for other separately identified offices or committees. The name of each candidate must be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors. Electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically.

(2) One mail ballot that conforms to Section 2(d) of this article and one instruction sheet stating specific instructions for the electronic election procedure, including how to access and use the system, and the period of time in which votes will be taken. The instruction will state that members without the requisite electronic device necessary to vote on the system may vote by submitting the enclosed mail ballot and specify the date the mail ballot must be received by the credit union. For members who have opted to receive notices or statements electronically, the mail ballot is not required and electronic mail may be used to provide the instructions for the electronic election procedure.

(3) It is the duty of the tellers of election to verify, or cause to be verified the name of the voter and the credit union account number as they are registered in the electronic balloting system. It is the duty of the teller to test

the integrity of the balloting system at regular intervals during the election period.

(4) Ballots must be received no later than midnight, 5 calendar days before the annual meeting.

(5) The vote will be tallied by the tellers. The result must be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

(6) In the event of malfunction of the electronic balloting system, the board of directors may in its discretion order elections be held by mail ballot only. The mail ballots must conform to Section 2(d) of this article and must be mailed once more to all eligible members 30 days before the annual meeting. The board may make reasonable adjustments to the voting time frames above, or postpone the annual meeting when necessary, to complete the elections before the annual meeting.

(d) If the credit union is conducting its election by mail ballot, the secretary will cause the following materials to be mailed to each member and the following procedures will be followed:

(1) One ballot, clearly identified as the ballot on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in random order. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, following instructions provided with the mailing envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, one form can be printed that represents a combined ballot and identification form, and postage prepaid and preaddressed return envelope;

(6) It is the duty of the tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(7) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(8) The vote will be tallied by the tellers. The result will be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

*All Options Continue Here*

Section 3. Order of nominations. Nominations may be in the following order:

(a) Nominations for directors.

(b) Nominations for credit committee members, if applicable. Elections may be by separate ballots following the same order as the above nominations or, if preferred, may be by one ballot for all offices.

Section 4. Proxy and agent voting. Members cannot vote by proxy. A member other than a natural person may vote through an agent designated in writing for the purpose.

Section 5. One vote per member. Irrespective of the number of shares, no member has more than one vote.

Section 6. Submission of information regarding credit union officials to NCUA. The names and addresses of members of the board, board officers, executive committee, and members of the credit committee, if applicable, and supervisory committees must be forwarded to the Administration in accordance with the Act and regulations in the manner as may be required by the Administration.

Section 7. Minimum age requirement. Members must be at least ____ years of age by the date of the meeting (or for appointed offices, the date of appointment) in order to vote at meetings of the members, hold elective or appointive office, sign nominating petitions, or sign petitions requesting special meetings.

*The Credit Union's board should adopt a resolution inserting an age no greater than 18, or the age of majority under the state law applicable to the credit union, in the blank space.*

*The Credit Union may select the absentee ballot provision in conjunction with the voting procedure it has selected. This may be done by printing the credit union's bylaws with this provision or by retaining this copy and checking the box.*

____ Section 8. Absentee ballots. The board of directors may authorize the use of absentee ballots in conjunction with the other procedures authorized in this article, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 30 days before the annual meeting, will cause printed ballots to be mailed to all members of the credit union who are eligible to vote and who have submitted a written or electronic request for an absentee ballot;

(c) The secretary will cause the following materials to be mailed to each eligible voter who has submitted a written or electronic request for an absentee ballot:

(1) One ballot, clearly identified as the ballot on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in random order. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided with the envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, one form can be printed that represents a combined ballot and identification form, and postage prepaid and preaddressed return envelope;

(d) It is the duty of the election tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and the sealed ballot envelope together until the verification or challenge has been resolved; and in the event that more than one voting procedure is used, to verify that no eligible voter has voted more than one time;

(e) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(f) Absentee ballots will be deposited in the ballot boxes to be taken to the annual meeting or included in a precount in accordance with procedures specified in Article V, Section 2; and

(g) If a member has chosen to receive statements and notices electronically, the credit union may provide notices required in this section by email and provide instructions for voting via electronic means instead of mail ballots.

Staff commentary on the election process:

*Eligibility Requirements:* The Act and the FCU Bylaws contain the only eligibility requirements for membership on an FCU's board of directors, which are as follows:

(a) The individual must be a member of the FCU before distribution of ballots;

(b) The individual cannot have been convicted of a crime involving dishonesty or breach of trust unless the NCUA Board has waived the prohibition for the conviction; and

(c) The individual meets the minimum age requirement established under Article V, Section 7 of the FCU Bylaws.

Anyone meeting the three eligibility requirements may run for a seat on the board of directors if properly nominated. It is the nominating committee's duty to ascertain that all nominated candidates, including those nominated by petition, meet the eligibility requirements.

*Nomination Criteria for Nominating Committee:* The FCU Act and the FCU Bylaws do not prohibit a board of directors from establishing reasonable criteria, in addition to the eligibility requirements, for a nominating committee to follow in making its nominations, such as financial experience, years of membership, or conflict of interest provisions. The board's nomination criteria, however, applies only to individuals nominated by the nominating committee; they cannot be imposed on individuals who meet the eligibility requirements and are properly nominated from the floor or by petition.

*Candidates' Names on Ballots:* When producing an election ballot, the FCU's secretary may order the names of the candidates on the ballot using any method for selection provided it is random and used consistently from year to year so as to avoid manipulation or favoritism.

*Secret Ballots:* An FCU must establish an election process that assures members their votes remain confidential and secret from all interested parties. If the election process does not separate the member's identity from the ballot, FCUs should use a third-party teller that has sole control over completed ballots. If the ballots are designed so that members' identities remain secret and are not disclosed on the ballot, FCUs may use election tellers from the FCU. In any case, FCU employees, officials, and members must not have access to ballots identifying members or to information that links members' votes to their identities.

*Plurality Voting:* At least one nominee must be nominated for each vacant seat. When there are more nominees than seats open for election, the nominees who receive the greatest number of votes are elected to the vacant seats.

*Minimum Age Requirement:* The age the board selects may not be greater than the age of majority under the state law applicable to the credit union.

**Article VI. Board of Directors**

Section 1. Number of members. The board consists of _____ members, all of whom must be members of this credit union. The number of directors may be changed to an odd number not fewer than 5 nor more than 15 by resolution of the board. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of directors must be filed with the official copy of the bylaws of this credit union.

Section 2. Composition of board. _____ (Fill in the number, which may be zero) directors or committee members may be a paid employee of the credit union. _____ (Fill in the number, which may be zero) immediate family members of a director or committee member may be a paid employee of the credit union. In no case may employees, family members, or employees and family members constitute a majority of the board. The board may appoint a management official who _____ (may or may not) be a member of the board and one or more assistant management officials who _____ (may or may not) be a member of the board. If the management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair.

Section 3. Terms of office. Regular terms of office for directors must be for periods of either 2 or 3 years as the board determines. All regular terms must be for the same number of years and until the election and qualification of successors. Regular terms must be fixed at the first meeting, or upon any increase or decrease in the number of directors, so that approximately an equal number of regular terms must expire at each annual meeting.

Section 4. Vacancies. Any vacancy on the board, credit committee, if applicable, or supervisory committee will be filled as soon as possible by vote of a majority of the directors then holding office. Directors and credit committee members appointed to fill a vacancy will hold office only until the next annual meeting, at which any unexpired terms will be filled by vote of the members, and until the qualification of their successors. Members of the supervisory committee appointed to fill a vacancy will hold office until the first regular meeting of the board following the next annual meeting of members, at which the regular term expires, and until the appointment and qualification of their successors.

Section 5. Regular and special meetings. A regular meeting of the board must be held each month at the time and place fixed by resolution of the board. One regular meeting each calendar year must be conducted in person. If a quorum is present in person for the annual in person meeting, the remaining board members may participate using audio or video teleconference methods. The other regular meetings may be conducted using audio or video teleconference methods. The chair, or in the chair's absence the ranking vice chair, may call a special meeting of the board at any time and must do so upon written request of a majority of the directors then holding office. Unless the board prescribes otherwise, the chair, or in the chair's absence the ranking vice chair, will fix the time and place of special meetings. Notice of all meetings will be given in the manner the board may from time to time by resolution prescribe. Special meetings may be conducted using audio or video teleconference methods.

Section 6. Board responsibilities. The board has the general direction and control of the affairs of this credit union and is responsible for performing all the duties customarily performed by boards of directors. This includes but is not limited to the following:

(a) Directing the affairs of the credit union in accordance with the Act, these bylaws, the rules and regulations and sound business practices.

(b) Establishing programs to achieve the purposes of this credit union as stated in Article I, Section 2, of these bylaws.

(c) Establishing a loan collection program and authorizing the chargeoff of uncollectible loans.

(d) Establishing a policy to address training for newly elected and incumbent directors and volunteer officials, in areas such as ethics and fiduciary responsibility, regulatory compliance, and accounting and determining that all persons appointed or elected by this credit union to any position requiring the receipt, payment or custody of money or other property of this credit union, or in its custody or control as collateral or otherwise, are properly bonded in accordance with the Act and regulations.

(e) Performing additional acts and exercising additional powers as may be required or authorized by applicable law.

*If the credit union has an elected credit committee, you do not need to check a box. If the credit union has no credit committee check Option 1 and if it has an appointed credit committee check Option 2.*

____ *Option 1—No Credit Committee*

(f) Reviewing denied loan applications of members who file written requests for review.

(g) Appointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit.

(h) In its discretion, appointing a loan review committee to review loan denials and delegating to the committee the power to overturn denials of loan applications. The committee will function as a mid-level appeal committee for the board. Any denial of a loan by the committee must be reviewed by the board upon written request of the member. The committee must consist of three members and the regular term of office of the committee member will be for two years. Not more than one member of the committee may be appointed as a loan officer.

____ *Option 2—Appointed Credit Committee*

(f) Appointing an odd number of credit committee members as provided in Article VIII of these bylaws.

Section 7. Quorum. A majority of the number of directors, including any vacant positions, constitutes a quorum for the transaction of business at any meeting, except that vacancies may be filled by a quorum consisting of a majority of the directors holding office as provided in Section 4 of this article. Fewer than a quorum may adjourn from time to time until a quorum is in attendance.

Section 8. Attendance and removal. If a director or a credit committee member, if applicable, fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or 4 meetings within a calendar year, or otherwise fails to perform any of the duties as a director or a credit committee member, the office may be declared vacant by the board and the vacancy filled as provided in the bylaws.

The board may remove any board officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

When any board officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of the office, the board may by resolution designate another member of this credit union to fill the position temporarily. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

Section 9. Suspension of supervisory committee members. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members of this credit union will decide, at a special meeting held not fewer than 7 nor more than 14 days after any suspension, whether the suspended committee member will be removed from or restored to the supervisory committee.

**Article VII. Board Officers, Management Officials and Executive Committee**

Section 1. Board officers. The board officers of this credit union are comprised of a chair, one or more vice chairs, a financial officer, and a secretary, all of whom are elected by the board and from their number. The board determines the title and rank of each board officer and records them in the addendum to this article. One board officer, the _____, may be compensated for services as determined by the board. If more than one vice chair is elected, the board determines their rank as first vice chair, second vice chair, and so on. The offices of the financial officer and secretary may be held by the same person. If a management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair. Unless removed as provided in these bylaws, the board officers elected at the first meeting of the board hold office until the first meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. Election and term of office. Board officers elected at the meeting of the board next following the annual meeting of the members, which must be held not later than 7 days after the annual meeting, hold office for a term of 1 year and until the election and qualification of their respective successors: provided, however, that any person elected to fill a vacancy caused by the death, resignation, or removal of an officer is elected by the board to serve only for the unexpired term of that officer and until a successor is duly elected and qualified.

Section 3. Duties of Chair. The chair presides at all meetings of the members and at all meetings of the board, unless disqualified through suspension by the supervisory committee. The chair also performs other duties customarily assigned to the office of the chair or duties he or she is directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. Approval required. The board must approve all individuals who are authorized to sign all notes of this credit union and all checks, drafts and other orders for disbursement of credit union funds.

Section 5. Vice chair. The ranking vice chair has and may exercise all the powers, authority, and duties of the chair during the chair's absence or inability to act.

Section 6. Duties of financial officer. The financial officer manages this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager. Subject to limitations, controls and delegations the board may impose, the financial officer will:

(a) Have custody of all funds, securities, valuable papers and other assets of this credit union.

(b) Provide and maintain full and complete records of all the assets and liabilities of this credit union in accordance with forms and procedures prescribed in regulations and other guidance approved by the Administration, including, for small credit unions, the Accounting Manual for Federal Credit Unions.

(c) Within 20 days after the close of each month, ensure that a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans is prepared and submitted to the board and post a copy of the statement

in a conspicuous place in the office of the credit union where it will remain until replaced by the financial statement for the next succeeding month.

(d) Ensure that financial and other reports the Administration may require are prepared and sent.

(e) Within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove these employees.

(f) Perform other duties customarily assigned to the office of the financial officer or duties he or she is directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws.

The board may employ one or more assistant financial officers, none of whom may also hold office as chair or vice chair, and may authorize them, under the direction of the financial officer, to perform any of the duties devolving on the financial officer, including the signing of checks. When designated by the board, any assistant financial officer may also act as financial officer during the financial officer's temporary absence or temporary inability to act.

Section 7. Duties of management official and assistant management official. The board may appoint a management official who is under the direction and control of the board or of the financial officer as determined by the board. The management official may be assigned any or all of the responsibilities of the financial officer described in Section 6 of this article. The board will determine the title and rank of each management official and record them in the addendum to this article. The board may employ one or more assistant management officials. The board may authorize assistant management officials under the direction of the management official, to perform any of the duties devolving on the management official, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the management official's temporary absence or temporary inability to act.

Section 8. Board powers regarding employees. The board employs, fixes the compensation, and prescribes the duties of employees as necessary, and has the power to remove employees, unless it has delegated these powers to the financial officer or management official. Neither the board, the financial officer, nor the management official has the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance employed or used by the supervisory committee and, if there is a credit committee, the power or duty to employ, prescribe the duties of, or remove any loan officer appointed by the credit committee.

Section 9. Duties of secretary. The secretary prepares and maintains full and correct records of all meetings of the members and of the board, which records will be prepared within 7 days after the respective meetings. The secretary must promptly inform the Administration in writing of any change in the address of the office of this credit union or the location of its principal records. The secretary will give or cause to be given, in the manner prescribed in these bylaws, proper notice of all meetings of the members, and perform other duties he or she may be directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws. The board may employ one or more assistant secretaries, none of whom may also hold office as chair, vice chair, or financial officer, and may authorize them under direction of the secretary to perform any of the duties assigned to the secretary.

Section 10. Executive committee. As authorized by the Act, the board may appoint an executive committee of not fewer than three directors to serve at its pleasure, to act for it with respect to the board's specifically delegated functions. When making delegations to the executive committee, the board must be specific with regard to the committee's authority and limitations related to the particular delegation. The board may also authorize any of the following to approve membership applications under conditions the board and these bylaws may prescribe: an executive committee; a membership officer(s) appointed by the board from the membership, other than a board member paid as an officer; the financial officer; any assistant to the paid officer of the board or to the financial officer; or any loan officer. No executive committee member or membership officer may be compensated as such.

Section 11. Investment committee. The board may appoint an investment committee composed of not less than two, to serve at its pleasure to have charge of making investments under rules and procedures established by the board. No member of the investment committee may be compensated as such.

Addendum: The board must list the positions of the board officers and management officials of this credit union. They are as follows:

*Select Option 1 if the credit union has a credit committee and Option 2 if it does not have a credit committee.*

____ *Option 1—Article VIII. Credit Committee*

Section 1. Credit committee members. The credit committee consists of ____ members. All the members of the credit committee must be members of this credit union. The number of members of the credit committee must be an odd number and may be changed to not fewer than 3 nor more than 7 by resolution of the board. No reduction in the number of members may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of committee members must be filed with the official copy of the bylaws of this credit union.

Section 2. Terms of office. Regular terms of office for elected credit committee members are for periods of either 2 or 3 years as the board determines: provided, however, that all regular terms are for the same number of years and until the election and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, that approximately an equal number of regular terms expire at each annual meeting.

Regular terms of office for appointed credit committee members are for periods as determined by the board and as noted in the board's minutes.

Section 3. Officers of credit committee. The credit committee chooses from their number a chair and a secretary. The secretary of the committee prepares and maintains full and correct records of all actions taken by it, and those records must be prepared within 3 days after the action. The offices of the chair and secretary may be held by the same person.

Section 4. Credit committee powers. The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure, and delegate to them the power to approve application for loans or lines of credit, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. Not more than one member of the committee may be appointed as a loan officer. Each loan officer must furnish to the committee a record of each approved or not approved transaction within 7 days of the date of

the filing of the application or request, and this record becomes a part of the records of the committee. All applications or requests not approved by a loan officer must be acted upon by the committee. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 5. Credit committee meetings. The credit committee holds meetings as the business of this credit union may require, and not less frequently than once a month. Notice of meetings will be given to members of the committee in a manner as the committee may from time to time, by resolution, prescribe.

Section 6. Credit committee duties. For each loan or line of credit, the credit committee or loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The credit committee and its appointed loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 7. Unapproved loans prohibited. No loan or line of credit may be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

Section 8. Lending procedures. Subject to the limits imposed by applicable law and regulations, these bylaws, and the general policies of the board, the credit committee, or a loan officer, determines the security, if any, required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the smaller applications if the need and credit factors are nearly equal.

____ *Option 2—Article VIII. Loan Officers (No Credit Committee)*

Section 1. Records of loan officer; prohibition on loan officer disbursing funds. Each loan officer must maintain a record of each approved or not approved transaction within 7 days of the filing of the application or request, and that record becomes a part of the records of the credit union. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 2. Duties of loan officer. For each loan or line of credit, the loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 3. Unapproved loans prohibited. No loan or line of credit may be made unless approved by a loan officer in accordance with applicable law and regulations.

Section 4. Lending procedures. Subject to the limits imposed by law and regulations, these bylaws, and the general policies of the board, a loan officer determines the security if any required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the applications for lesser amounts if the need and credit factors are nearly equal.

**Article IX. Supervisory Committee**

Section 1. Appointment and membership. The supervisory committee is appointed by the board from among the members of this credit union, one of whom may be a director other than the financial officer or the compensated officer of the board. The board determines the number of members on the committee, which may not be fewer than 3 nor more than 5. No member of the credit committee, if applicable, or any employee of this credit union may be appointed to the committee. Regular terms of committee members are for periods of 1, 2, or 3 years as the board determines: Provided, however, that all regular terms are for the same number of years and until the appointment and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, so that approximately an equal number of regular terms expires at each annual meeting.

Section 2. Officers of supervisory committee. The supervisory committee members choose from among their number a chair and a secretary. The secretary of the supervisory committee prepares, maintains, and has custody of full and correct records of all actions taken by it. The offices of chair and secretary may be held by the same person.

Section 3. Duties of supervisory committee. The supervisory committee makes, or causes to be made, the audits, and prepares and submits the written reports required by the Act and regulations. The committee may employ and use clerical and auditing assistance required to carry out its responsibilities prescribed by this article, and may request the board to provide compensation for this assistance. It will prepare and forward to the Administration required reports.

Section 4. Verification of accounts. The supervisory committee will cause the verification of the accounts of members with the records of the financial officer from time to time and not less frequently than as required by the Act and regulations. The committee must maintain a record of this verification.

Section 5. Powers of supervisory committee—removal of directors and credit committee members. By unanimous vote, the supervisory committee may suspend until the next meeting of the members any director, board officer, or member of the credit committee. In the event of any suspension, the supervisory committee must call a special meeting of the members to act on the suspension, which meeting must be held not fewer than 7 nor more than 14 days after the suspension. The chair of the committee acts as chair of the meeting unless the members select another person to act as chair.

Section 6. Powers of supervisory committee—special meetings. By the affirmative vote of a majority of its members, the supervisory committee may call a special meeting of the members to consider any violation of the provisions of the Act, the regulations, or of the charter or the bylaws of this credit union, or to consider any practice of this credit union which the committee deems to be unsafe or unauthorized.

**Article X. Organization Meeting**

Section 1. Initial meeting. When application is made for a federal credit union charter, the subscribers to the organization certificate must meet for the purpose of electing a board of directors and a credit committee, if applicable. Failure to commence operations within 60 days following receipt of the approved organization certificate is cause for revocation of the charter unless a request for an extension

of time has been submitted to and approved by the Regional Director.

Section 2. Election of directors and credit committee. The subscribers elect a chair and a secretary for the meeting. The subscribers then elect from their number, or from those eligible to become members of this credit union, a board of directors and a credit committee, if applicable, all to hold office until the first annual meeting of the members and until the election and qualification of their respective successors. If not already a member, every person elected under this section or appointed under Section 3 of this article, must qualify within 30 days by becoming a member. If any person elected as a director or committee member or appointed as a supervisory committee member does not qualify as a member within 30 days of election or appointment, the office will automatically become vacant and be filled by the board.

Section 3. Election of board officers. Promptly following the elections held under the provisions of Section 2 of this article, the board must meet and elect the board officers who will hold office until the first meeting of the board of directors following the first annual meeting of the members and until the election and qualification of their respective successors. The board also appoints a supervisory committee at this meeting as provided in Article IX, Section 1, of these bylaws and a credit committee, if applicable. The members so appointed hold office until the first regular meeting of the board following the first annual meeting of the members and until the appointment and qualification of their respective successors.

**Article XI. Loans and Lines of Credit to Members**

Section 1. Loan purposes. Loans may only be made to members and for provident or productive purposes in accordance with applicable law and regulations.

*The credit union may add business as one of its purposes by placing a comma after ''provident'' and inserting ''business.''*

Section 2. Delinquency. Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

**Article XII. Dividends**

Section 1. Power of board to declare dividends. The board establishes dividend periods and declares dividends as permitted by the Act and applicable regulations.

**Article XIII. Reserved**

**Article XIV. Expulsion and Withdrawal**

Section 1. Expulsion procedure; expulsion or withdrawal does not affect members' liability or shares. A member may be expelled by a two-thirds vote of the members present at special meeting called for that purpose, but only after the member has been given the opportunity to be heard. A member also may be expelled under a nonparticipation policy adopted by the board of directors and provided to each member in accordance with the Act. Expulsion or withdrawal will not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, before their expulsion or withdrawal, will be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting any amounts due to this credit union.

**Article XV. Minors**

Section 1. Minors permitted to own shares. Shares may be issued in the name of a minor. State law governs the rights of minors to transact business with this credit union.

**Article XVI. General**

Section 1. Compliance with law and regulation. All power, authority, duties, and functions of the members, directors, officers, and employees of this credit union, pursuant to the provisions of these bylaws, must be exercised in strict conformity with the provisions of applicable law and regulations, and of the charter and the bylaws of this credit union.

Section 2. Confidentiality. The officers, directors, members of committees and employees of this credit union must hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except when permitted by state or federal law.

Section 3. Removal of directors and committee members. Notwithstanding any other provisions in these bylaws, any director or committee member of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given to be heard.

Section 4. Conflicts of interest prohibited. No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the deliberation upon or the determination of any question affecting his or her pecuniary or personal interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he or she is directly or indirectly interested. In the event of the disqualification of any director respecting any matter presented to the board for deliberation or determination, that director must withdraw from the deliberation or determination; and if the remaining qualified directors present at the meeting plus the disqualified director or directors constitute a quorum, the remaining qualified directors may exercise with respect to this matter, by majority vote, all the powers of the board. In the event of the disqualification of any member of the credit committee, if applicable, or the supervisory committee, that committee member must withdraw from the deliberation or determination.

Section 5. Records. Copies of the organization certificate of this credit union, its bylaws and any amendments to the bylaws, and any special authorizations by the Administration must be preserved in a place of safekeeping. Copies of the organization certificate and field of membership amendments should be attached as an appendix to these bylaws. Returns of nominations and elections and proceedings of all regular and special meetings of the members and directors must be recorded in the minute books of this credit union. The minutes of the meetings of the members, the board, and the committees must be signed by their respective chairmen or presiding officers and by the persons who serve as secretaries of those meetings.

Section 6. Availability of credit union records. All books of account and other records of this credit union must be available at all times to the directors and committee members of this credit union provided they have a proper purpose for obtaining the records. The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee.

Section 7. Member contact information. Members must keep the credit union informed of their current address.

Section 8. Indemnification. (a) The credit union may elect to indemnify to the extent authorized by (check one)

[□] law of the state of _____:

[□] Model Business Corporation Act:

The following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or

administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

[□] current officials
[□] former officials
[□] current employees
[□] former employees

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(c) The term ''official'' in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

**Article XVII. Amendments of Bylaws and Charter**

Section 1. Amendment procedures. Amendments of these bylaws may be adopted and amendments of the charter requested by the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting of the board if the members of the board have been given prior written notice of the meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter may become effective, however, until approved in writing by the NCUA Board.

**Article XVIII. Definitions**

Section 1. General definitions. When used in these bylaws the terms:

''Act'' means the Federal Credit Union Act, as amended.

''Administration'' means the National Credit Union Administration.

''Applicable law and regulations'' means the Federal Credit Union Act and rules and regulations issued thereunder or other applicable federal and state statutes and rules and regulations issued thereunder as the context indicates (such as The Higher Education Act of 1965).

''Board'' means board of directors of the federal credit union.

''Immediate family member'' means spouse, child, sibling, parent, grandparent, grandchild, stepparents, stepchildren, stepsiblings, and adoptive relationships.

''NCUA Board'' means the Board of the National Credit Union Administration.

''Regulation'' or ''regulations'' means rules and regulations issued by the NCUA Board.

''Share'' or ''shares'' means all classes of shares and share certificates that may be held in accordance with applicable law and regulations.

[FR Doc. 06–3917 Filed 4–25–06; 8:45 am]

BILLING CODE 7535–01–P

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## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 707

**RIN 3133–AC57**

## Truth in Savings

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** As required by the Truth in Savings Act, NCUA is finalizing its rule and official staff interpretation to address the uniformity and adequacy of information provided to members when they overdraw their share accounts. The amendments address services referred to as ''bounced-check protection'' or ''courtesy overdraft protection'' that credit unions may use to pay members'' checks and allow other overdrafts when there are insufficient funds in the account.

**DATES:** This rule became effective December 8, 2005. To allow time for any necessary system modifications, however, the mandatory compliance date for the final rule is amended to October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Moisette I. Green, Staff Attorney, at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### I. The Interim Rule

The Truth in Savings Act (TISA) requires financial institutions to disclose fees, the annual percentage yield, interest rate, and other terms associated with their accounts. 12 U.S.C. 4301 *et seq.* TISA also requires NCUA to promulgate regulations substantially similar to those promulgated by the Board of Governors of the Federal Reserve System (Federal Reserve) within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, NCUA is adopting a final rule substantially similar to the Federal Reserve's May 2005 rule that requires banks to make certain disclosures when they offer or promote courtesy overdraft protection services to consumers. 70 FR 29582 (May 24, 2005).

The Federal Reserve's implementation of TISA, 12 CFR part 230 (Regulation DD), requires banks to disclose rates and fees charged as a part of ''bounced-check protection'' or ''courtesy overdraft protection'' programs offered as an alternative to traditional overdraft lines of credit. Regulation DD also requires financial institutions that promote the payment of overdrafts in an advertisement to: (1) Disclose the total fees imposed for paying overdrafts and returning unpaid items on periodic statements for both the statement period and the calendar year to date and (2) include certain other disclosures in advertisements of courtesy overdraft services.

In November 2005, the NCUA Board issued an interim final rule, with a 60-day comment period, that adopted revisions to part 707 and the accompanying official staff interpretation to comply with the Board's obligation under TISA. 70 FR 72895 (December 8, 2005). NCUA's interim rule was substantially similar to Regulation DD, except for some modifications to account for the unique nature of credit unions. The rule consolidated the guidance for credit unions that promote the payment of overdrafts in a new § 707.11 to facilitate compliance. To give credit unions sufficient time to implement the necessary system changes to comply with the regulation, NCUA established that compliance with the final rule would not become mandatory until July 1, 2006.

### II. Public Comments

The interim rule solicited comment about current courtesy overdraft services and the estimated burden of the new requirements. NCUA received 16 comments regarding the interim rule from: Seven credit unions, two credit union trade associations, five credit union leagues, a consumer protection group, and one consumer.

Of the comments NCUA received from credit unions, two believed the rule was overly burdensome, and five requested additional time for compliance. Four officials from one credit union provided the same comment, which NCUA has counted as one, that the disclosure requirements of

the final rule are unduly burdensome and expensive. Another credit union commented on NCUA's Paperwork Reduction Act analysis and stated that NCUA had underestimated the burden to credit unions, especially as it relates to employee training. The Board notes that it has estimated eight hours for each credit union to undertake a one-time reprogramming and updating of their information systems and an additional forty hours to update advertising materials. As the required changes essentially are the identification of fees, the Board believes that employee training in this area will be minimal and did not identify a separate category of burden hours for training.

Five credit unions commented that the July 1, 2006 mandatory compliance date did not give credit unions and their software providers sufficient time to make the necessary system changes and test their programs. They requested NCUA change the mandatory compliance date to January 1, 2007.

One credit union trade association also commented on the short time between the rule's effective and the mandatory compliance dates and recommended NCUA change the date to December 31, 2006. Additionally, it requested NCUA clarify the requirements for periodic statements. While the substance of this final rule is unchanged, a brief summary of the rule appears below to help credit unions understand its requirements.

The other credit union trade association specifically supported the regulation of courtesy overdraft programs under the TISA instead of under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* (TILA), but like the other trade association and the credit unions, objected to the July 1, 2006 mandatory compliance date and requested a January 1, 2007 date. It also commented that NCUA should determine if there is flexibility in the rule due to the burden to credit unions and the likelihood required disclosures may confuse credit union members. The Board disagrees that credit union members will find the disclosures confusing but, as intended by the rule, the disclosures will provide important information to members about the fees associated with overdraft protection.

The majority of the credit union leagues that commented on the final rule generally supported it, but suggested the mandatory compliance date should be January 1, 2007. Two leagues raised concerns with the definition of ''advertisement'' in § 707.2(b), and one suggested NCUA provide a list of what constitutes ''advertising'' so credit unions will have a clear understanding of when the additional, cumulative disclosures are mandatory. Another league recommended NCUA use the term ''courtesy overdraft protection program'' to clarify that the rule covers only those programs in which a credit union pays a draft on behalf of a member and not the situation in which it transfers funds from another account to cover the draft. This same league also expressed concerns that the disclosures required if a credit union advertises its program may become excessive. The one league that opposed the final rule commented that credit unions already give its members sufficient disclosures.

A nonprofit organization that specializes in consumer credit issues on behalf of low-income people, submitted the same comments it submitted during the Federal Reserve's rulemaking. This organization advocates the regulation of courtesy overdraft protection programs under TILA instead of TISA, commented that problems with bounce protection have increased since the Federal Reserve's rulemaking, and asked NCUA to consider TILA coverage for courtesy overdraft protection programs.

While NCUA appreciates these comments, the Board must comply with TISA and adopt a rule that is similar to the Federal Reserve's Regulation DD. Additionally, the amendments to part 707 recognize that a courtesy overdraft service is a feature and term of a share account and the fees associated with the service are assessed against the share account. These rules under part 707 do not preclude a future determination by the Federal Reserve that TILA disclosures would also benefit consumers.

The consumer who commented on this rulemaking expressed concern about the purpose of the rulemaking and questioned why the final rule required institutions to disclose fees for paid and returned items separately. The consumer was concerned that all institutions would not disclose the same fees or include the same fees in each total and does not believe the rule would help consumers who regularly pay fees for courtesy overdraft protection programs. The consumer also commented that the mandatory compliance date should be January 1, 2007.

When the Board issued the interim rule, it adopted the July 1, 2006 compliance date to track the Federal Reserve's amendments to Regulation DD. The Board appreciates, however, the concern about credit unions' ability to reprogram their systems in time to provide the required disclosures in periodic statements by July 1, 2006. The Board wants to ensure smaller credit unions that may not rely solely on software vendors have adequate time to comply with the new disclosure rules. Because TISA disclosures allow consumers to make meaningful comparisons between the competing claims of depository institutions regarding deposit accounts, the Board is also concerned that consumers may be disadvantaged by delaying the compliance date for credit unions, but any disadvantage to consumers caused by a delay is outweighed by the Board's concern that members receive accurate disclosures about their share accounts. Accordingly, the Board is amending the mandatory compliance date to October 1, 2006.

## III. The Final Rule

To comply with the Board's obligation under TISA, it is adopting the interim final revisions to part 707 and the accompanying official staff interpretation as a final rule. Because NCUA has made no substantive changes to the interim rule, the regulatory text has not been republished in the **Federal Register**. The following is a summary of the revisions to part 707 and the staff commentary. This rule tracks closely the Federal Reserve's recent amendments to Regulation DD, and was published with minor modifications to account for the unique nature of credit union payments of dividends as opposed to interest in the **Federal Register** in December 2005. 70 FR 29582 (May 24, 2005); 70 FR 72895 (December 8, 2005).

### *Disclosures Concerning Overdraft Fees on Periodic Statements*

Courtesy overdraft protection allows the payment of a check or debit transaction that would otherwise be rejected for non-sufficient funds (NSF). Payment of the item overdraws the member's account, and a fee is charged for paying the NSF item. Under courtesy overdraft protection programs, there is no written agreement between the member and credit union to pay NSF items. Instead, payment is made at the discretion of the credit union, and a fee is charged for each item paid. A transfer of available funds from another of a member's share accounts to cover an overdraft is not courtesy overdraft protection for the purposes of this rule. Generally, courtesy overdraft protection services allow a credit union to make an occasional, manual payment of an overdraft on a member's behalf. Some financial institutions have automated the decision and payment process however.

Credit unions that provide courtesy overdraft protection, but do not

advertise it, must disclose fees debited from a share account on their periodic statements. If fees of the same type are imposed more than once in a statement period, then the fees may be itemized separately or grouped together and the total disclosed. Credit unions that advertise courtesy overdraft protection programs must separately disclose the total fees charged to an account for paying items when there are NSFs and the total fees for returning items unpaid for both the statement period and calendar year to date. Credit unions that do not provide courtesy overdraft protection or advertise the payment of overdrafts would not be required to provide the new periodic statement disclosures under the final rule.

*Account-Opening Disclosures*

All credit unions that have a courtesy overdraft protection program must specify in account-opening disclosures the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient to state that the fee is imposed for overdrafts created by checks, in-person withdrawals, ATM withdrawals, or by other electronic means, as applicable.

*Advertising Rules*

Along with providing additional disclosures in periodic statements when they advertise courtesy overdraft protection, credit unions must include disclosures in their advertisements. For the purpose of courtesy overdraft protection, an advertisement is a commercial message that promotes the availability or terms of the service with a share account. To avoid confusion with traditional lines of credit, credit unions that promote the payment of overdrafts must include in their advertisements about the service:

(1) The applicable fees or charges;

(2) The categories of transactions covered;

(3) The time period members have to repay or cover any overdraft; and

(4) The circumstances under which the credit union would not pay an overdraft.

Stating the available overdraft limit or the amount of funds available on a periodic statement would be considered an advertisement triggering the required disclosures.

The final rule provides safe harbors from the advertising requirements similar to those for the periodic statement disclosure requirements. The advertising disclosure requirements would not apply to credit unions when they:

(1) Promote a traditional line of credit;

(2) Respond to a member-initiated inquiry;

(3) Engage in an in-person discussion with a member;

(4) Make disclosures required by federal or other applicable law;

(5) Notify a member about a specific overdraft in their account;

(6) Discuss their right to pay overdrafts in a share account agreement;

(7) Provide a notice to a member that items overdrawing an account may trigger a fee; or

(8) Provide educational materials.

Advertising disclosures are not required on ATM receipts or for advertisements using broadcast media, billboards, or telephone response systems. Limited advertising disclosures are required on ATM screens, telephone response machines, and indoor signs. For example, a sign in a credit union lobby advertising courtesy overdraft protection must state that fees may apply and direct members to contact a credit union employee for more information.

*Prohibiting Misleading Advertisements*

The rule extends TISA's prohibition against advertisements, announcements, or solicitations that are misleading or misrepresent the deposit agreement to communications with members about the terms of their existing accounts. The staff interpretation provides examples of advertisements that would ordinarily be deemed misleading.

## IV. Regulatory Procedures

*Regulatory Flexibility Analysis*

The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.* TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow members to make meaningful comparisons between different accounts and also allow members to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is adopting revisions to part 707 to address the uniformity and adequacy of credit unions' disclosure of fees associated with courtesy overdraft services generally and to address concerns about advertised courtesy overdraft services in particular. The existing regulation is amended to require credit unions offering certain courtesy overdraft services to provide more complete information regarding those services. The Board believes that the revisions to part 707 are within its authority to adopt provisions that carry out the purposes of the statute.

There are other laws and regulations that credit unions must consider when administering an overdraft protection program, including the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*, 12 CFR part 202 (Regulation B), and 12 CFR 701.21(c)(3). Although other laws and regulations may apply to credit unions' payment of overdrafts, the final revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the final revisions to part 707 are consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

Approximately 2,666 of the credit unions in the United States that must comply with TISA have assets of $10 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act, based on 2004 call report data. The Board believes that almost all small credit unions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts, although the number of small credit unions that promote their courtesy overdraft services is unknown. For those credit unions that promote the payment of overdrafts in an advertisement, periodic statement disclosures will need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small credit unions will have to review, and perhaps revise account-opening disclosures and marketing materials.

The revisions to part 707 require all credit unions to provide more complete information to members regarding courtesy overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. Credit unions that provide courtesy overdraft services must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount for returning items unpaid. If a credit union promotes or advertises its courtesy overdraft protection program, the credit union must provide these disclosures for the statement period and for the calendar year to date for each account to which the credit union provides the service. Certain advertising

practices are prohibited, and additional disclosures on advertisements of courtesy overdraft services are required.

The Board solicited comment on how the burden of disclosures on credit unions could be minimized, but received no suggestions. Therefore, NCUA is issuing a final rule with only clarifying modifications and no substantive changes.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Board submitted the information collection requirements contained in this final rule to the Office of Management and Budget (OMB). OMB approved the information collection on December 28, 2005, under control number 3133–0134.

NCUA estimated the total, continuing annual burden for the Truth in Savings program to be 12,076,057 hours for 9,128 credit unions. Two credit unions commented that the rule was overly burdensome, but provided no estimated costs, burden hours, or suggestions to minimize the burden.

NCUA has a continuing interest in the public's opinions of our information collections. Interested parties may send comments regarding the burden estimate or any other aspect of the collection, including suggestions for reducing the burden, at any time, to Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, E-mail: *regcomments@ncua.gov,* or Fax: (703) 518–6319. Send a copy of comments on the information collection to NCUA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, or fax (202) 395–6974 also. Include ''Comments on Part 707 Truth in Savings'' in the comments header.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

**List of Subjects in 12 CFR Part 707**

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 707 as set forth below:

## PART 707—TRUTH IN SAVINGS

■ Accordingly, the interim rule amending 12 CFR part 707, which was published at 70 FR 72898 on December 8, 2005, is adopted as a final rule without change.

By the National Credit Union Administration Board on April 20, 2006.

**Mary F. Rupp,**

*Secretary of the Board.*

[FR Doc. 06–3916 Filed 4–25–06; 8:45 am]

BILLING CODE 7535–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–24557; Directorate Identifier 2006–NM–082–AD; Amendment 39–14572; AD 2006–09–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757–200 and –200PF Series Airplanes Equipped With Pratt & Whitney Engines

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200 and –200PF series airplanes equipped with Pratt & Whitney engines. This AD requires repetitive detailed inspections to detect and correct any gap between the strut fitting and the forward engine mount assembly and applicable related investigative actions, corrective actions, and other specified actions. This AD results from a report indicating that gaps had been found between the strut fitting and the forward engine mount assembly. We are issuing this AD to detect and correct any gaps between the strut fitting and the forward engine mount assembly of both engines, which could result in separation of the engine from the wing and subsequent loss of control of the airplane.

**DATES:** This AD becomes effective May 11, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 11, 2006.

We must receive comments on this AD by June 26, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We have received a report indicating that gaps have been found between the strut fitting and the forward engine mount assembly above the Number 1 engine on Boeing Model 757–200 and –200PF series airplanes. The gap was caused by the loosening of vertical tension bolts that were installed on the forward engine mount installation. The gap at the two forward engine mount bolts was 3/16 of an inch and the gap at the aft two engine mount bolts was 1/8 of an inch. In addition, wear damage was also found on the surfaces of the forward engine mount assembly and the strut fitting. This condition, if not corrected, could result in separation of the engine from the wing and subsequent loss of control of the airplane.

## Relevant Service Information

We have reviewed Boeing Alert Service Bulletin (ASB) 757–71A0085, dated March 2, 2006.

Part 1 of the Accomplishment Instructions of the ASB describes procedures for an initial detailed inspection to detect gaps between the strut fitting and the forward engine mount assembly of both engines. Part 1 also describes the following related investigative actions, corrective actions, and other specified actions. If there is no gap found, Part 1 specifies applying inspection torque to each engine mount bolt and applying torque stripe between each bolt and forward engine mount surface. Part 1 also specifies, for certain limits, applying installation torque to all the bolts. If there is a gap between the strut fitting and forward engine mount assembly at a bolt location, Part 1 specifies a detailed inspection to detect damage of the parts and repairing or replacing parts. In addition, Part 1 advises operators to write to Boeing if necessary for repair information.

Part 2 of the Accomplishment Instructions of the ASB describes similar procedures for repetitive detailed inspections to detect gaps between the strut fitting and the forward engine mount assembly of both engines. Part 2 also describes the following related investigative actions, corrective actions, and other special actions. If there is no gap found but the torque stripe on one or more bolts is cracked, broken or missing, Part 2 specifies applying an inspection torque to each forward engine mount bolt and applying a new torque stripe between each bolt and forward engine mount surface. Part 2 also specifies, if there is a gap found between the strut fitting and forward engine mount assembly at a bolt location, performing a detailed inspection for damage of the forward engine mount and strut fitting and repairing or replacing any damaged parts. In addition, Part 2 advises operators to write to Boeing if necessary for repair information.

## FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to detect and correct any gaps between the strut fitting and the forward engine mount assembly. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the ASB.''

## Differences Between the AD and the ASB

Although the ASB specifies repairing or replacing, if damage is found on parts before subsequent flights, it also advises operators to write to the manufacturer if necessary for repair information. We have clarified in Note 1 of this AD that any deviation from the Accomplishment Instructions provided in the ASB must be approved as an alternative method of compliance under paragraph (h) of this AD.

## Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

## FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

## Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24557; Directorate Identifier 2006–NM–082–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

## Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

## Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2006–09–02 Boeing:** Amendment 39–14572. Docket No. FAA–2006–24557; Directorate Identifier 2006–NM–082–AD.

**Effective Date**

(a) This AD becomes effective May 11, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 757–200 and –200PF series airplanes, certificated in any category, equipped with Pratt & Whitney engines, as identified in Boeing Alert Service Bulletin (ASB) 757–71A0085, dated March 2, 2006.

**Unsafe Condition**

(d) This AD results from a report indicating that gaps had been found between the strut fitting and the forward engine mount assembly. We are issuing this AD to detect and correct any gaps found between the strut fitting and the forward engine mount assembly of both engines, which could result in separation of the engine from the wing and subsequent loss of control of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Initial Inspection**

(f) Within 90 days after the effective date of this AD or within 3,000 flight cycles since the most recent installation of each engine, whichever occurs later: For each engine, perform a detailed inspection to detect any gap between the strut fitting and the forward engine mount assembly of the engine, and before further flight, do all applicable related investigative actions, corrective actions, and other specified actions; in accordance with Part 1 of the Accomplishment Instructions of Boeing ASB 757–71A0085, dated March 2, 2006.

**Note 1:** In the Accomplishment Instructions of the ASB, the manufacturer provides instructions to repair or replace parts before ''subsequent'' flight if damage is found on parts. However, the manufacturer also specifies to write to the manufacturer if necessary for repair information. This AD requires that any deviation from the instructions provided in the ASB must be approved as an alternative method of compliance under paragraph (h) of this AD.

**Repetitive Inspections**

(g) Within 3,000 flight cycles after accomplishing the requirements of paragraph (f) of this AD: Perform a detailed inspection to detect any gap between the strut fitting and the forward mount assembly of both engines, and before further flight, do all applicable related investigative actions, corrective actions, and other specified actions; in accordance with Part 2 of the Accomplishment Instructions of Boeing ASB 757–71A0085, dated March 2, 2006. Thereafter, repeat the actions specified in Part 2 of the Accomplishment Instructions of the ASB at intervals not to exceed 3,000 flight cycles.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(i) You must use Boeing Alert Service Bulletin 757–71A0085, dated March 2, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–3891 Filed 4–25–06; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–23313; Directorate Identifier 2005–NM–111–AD; Amendment 39–14573; AD 2006–09–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727, 727C, 727–100, and 727–100C Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all

Boeing Model 727, 727C, 727–100, and 727–100C series airplanes. This AD requires repetitive inspections for cracks in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway, along the upper fastener row of the stringer 14R lap splice, and in the doorstop fitting adjacent to the upper hinge cutout; and corrective action if necessary. This AD also provides for optional terminating action for certain inspections. This AD results from reports of skin and bear strap cracking at the upper and lower hinge cutout and along the upper fastener row of the stringer 14R lap splice, and cracking in the doorstop fitting adjacent to the upper hinge cutout. There are also reports of cracking on airplanes previously modified in production to resist such cracking. We are issuing this AD to find and fix fatigue cracking of the fuselage, which could result in reduced structural integrity and consequent rapid decompression of the airplane.

**DATES:** This AD becomes effective May 31, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 31, 2006.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

## Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 727, 727C, 727–100, and 727–100C series airplanes. That NPRM was published in the **Federal Register** on December 15, 2005 (70 FR 74237). That NPRM proposed to require repetitive inspections for cracks in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway, along the upper fastener row of the stringer 14R lap splice, and in the doorstop fitting adjacent to the upper hinge cutout; and corrective action if necessary. That NPRM also proposed to provide for optional terminating action for certain inspections.

## Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received from one commenter, the airplane manufacturer.

### Request To Clarify Description of the Unsafe Condition

Boeing asks that the description of the unsafe conditions, as specified in paragraph (d) of the NPRM, be changed for clarification, to add the following: ''There are also reports of cracking on airplanes modified in production to resist such cracking.'' Boeing states that ''The modification installed in production was to enlarge the cutout radius. This did not prevent cracking, but rather resisted and delayed cracking to a later time.''

We infer that Boeing is asking for a change to the Summary section, as well as the second sentence in paragraph (d) of this AD. These paragraphs describe what prompted the AD. In the Discussion section of the NPRM we did note that modifications done in production did not prevent cracking. Therefore, we agree to clarify paragraph (d) and the Summary section as follows: ''There are also reports of cracking on airplanes previously modified in production to resist such cracking.''

### Request To Change the Discussion Section

Boeing asks that the eighth and ninth sentences in the Discussion section of the NPRM be changed. Those sentences are as follows: ''Some of the cracks were found on airplanes that were modified in service by increasing the radius of the corners of the body skin at the hinge cutouts, and installing doublers at the high cutouts; and airplanes on which the equivalent modification was done in production. These modifications did not prevent the cracking.'' Boeing asks that those sentences be changed to the following: ''Some of the cracks found on airplanes that were modified in production by increasing the radius of the cutout corners of the body skin hinge cutouts (sic). This modification did not prevent the cracking.'' Boeing states that this would correctly reflect that production modifications included only increasing the skin cutout radius and did not include installing skin doublers in the hinge areas. Boeing adds that production records indicate that no doublers were installed in production.

We acknowledge Boeing's concern and agree with the comment. No cracks have been reported yet on airplanes that were modified in service using Boeing Service Bulletin 727–53–0054, which increases the radius of the cutout corners of the body skin hinge cutouts, and adds skin doublers in the hinge areas. However, the ''Discussion'' section is included in an NPRM as background information on the unsafe condition to provide adequate information to the public during the comment period. The ''Discussion'' section is not included in the final rule. We have made no change to the AD in this regard.

### Request To Change the Other Relevant Rulemaking Section

Boeing asks that the fifth sentence in the Other Relevant Rulemaking section of the NPRM be changed. That sentence specifies ''One of the structural modifications in that AD is of the body skin of the mid-galley door hinge cutouts done in accordance with Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989.'' Boeing asks that the sentence be changed to the following, ''One of the structural modifications in that AD is of the body skin of the mid-galley door hinge cutouts, done in accordance with Boeing Service Bulletin 727–53–0054, initial release, dated June 26, 1968, with additional instructions shown in Boeing Document D6–54860, Rev C, page 3.2.1 for Boeing Service Bulletin 727–53–0054.'' Boeing states that the airplane effectivity specified in Revision 1 increased by three airplanes.

We acknowledge Boeing's concern and agree with the comment. In addition, we note that Boeing Document D6–54860, Rev C, specifies the airplane effectivity per the latest revision of the service bulletin, which is Service Bulletin 727–53–0054, Revision 1, which did include three additional airplanes. However, the ''Other Relevant Rulemaking'' section of the NPRM is not included in the final rule. We have made no change to the AD in this regard.

## Conclusion

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

## Costs of Compliance

There are about 232 airplanes of the affected design in the worldwide fleet. This AD affects about 123 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD, per inspection cycle.

ESTIMATED COSTS

| Airplane group | Work hours | Average hourly labor rate | Cost per airplane |
|---|---|---|---|
| Group 1, Configuration 1 | 10 | $65 | $650 |
| Group 1, Configuration 2 | 10 | 65 | 650 |
| Group 1, Configuration 3 | 9 | 65 | 585 |
| Group 2 | 9 | 65 | 585 |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2006–09–03 Boeing:** Amendment 39–14573. Docket No. FAA–2005–23313; Directorate Identifier 2005–NM–111–AD.

**Effective Date**

(a) This AD becomes effective May 31, 2006.

**Affected ADs**

(b) This AD is related to AD 98–11–03, amendment 39–10530, as corrected by AD 98–11–03 R1, amendment 39–10983.

**Applicability**

(c) This AD applies to all Boeing Model 727, 727C, 727–100 and 727–100C series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of skin and bear strap cracking at the upper and lower hinge cutout and along the upper fastener row of the stringer 14R lap splice, and cracking in the doorstop fitting adjacent to the upper hinge cutout. There are also reports of cracking on airplanes previously modified in production to resist such cracking. We are issuing this AD to find and fix fatigue cracking of the fuselage, which could result in reduced structural integrity and consequent rapid decompression of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Service Bulletin Reference**

(f) The term ''alert service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 727–53A0228, dated March 24, 2005.

**Repetitive Inspections**

(g) Accomplish the applicable inspections for any cracks (including stop-drilled, trimmed-out, or repaired cracks) in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway, along the upper fastener row of the stringer 14R lap splice, and in the doorstop fitting adjacent to the upper hinge cutout, as specified in Table 1 of paragraph 1.E. ''Compliance'' of the alert service bulletin. Accomplish the inspections at the applicable compliance time specified in Table 1 of paragraph 1.E.; except, where Table 1 specifies a compliance time relative to the date of the release of the alert service bulletin, this AD requires compliance relative to the effective date of this AD. Accomplish the inspections by doing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin. Inspections of door stop fittings made of 7075 material having part number (P/N) 65–23674–7 are not required. Repeat the applicable inspection at the applicable repeat interval specified in Table 1 of paragraph 1.E. of the alert service bulletin.

**Corrective Action**

(h) If any cracking is found during any inspection required by paragraph (g) of this AD, repair the cracking and repeat the inspection at the applicable compliance time specified in Table 1 of paragraph 1.E. ''Compliance'' of the alert service bulletin. Do the repair by doing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin.

Where the alert service bulletin specifies to report cracking to Boeing for repair instructions: Before further flight, repair any cracking according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (j)(3) of this AD.

**Optional Terminating Action**

(i) Replacement of the doorstop fitting with a fitting made of 7075 material having P/N 65–23674–7, in accordance with the Accomplishment Instructions of the alert service bulletin, terminates the repetitive inspections of that fitting, as required by paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) The inspection methods specified in Figures 9 through 12 of the alert service bulletin, as required by paragraph (g) of this AD, at the thresholds and intervals specified in paragraph (g), are approved as a method of compliance (MOC) to paragraph (b) of AD 98–11–03 and 98–11–03 R1, for the inspections of Structurally Significant Item F–16A, Supplemental Structural Inspection Document D6–48040–1, affected by the repair or modification. The MOC applies only to the areas inspected in accordance with Boeing Alert Service Bulletin 727–53A0228, dated March 24, 2005. All provisions of AD 98–11–03 R1 that are not specifically referenced in this paragraph remain fully applicable and must be complied with.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Material Incorporated by Reference**

(k) You must use Boeing Alert Service Bulletin 727–53A0228, dated March 24, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–3890 Filed 4–25–06; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–24586; Directorate Identifier 2006–NM–100–AD; Amendment 39–14579; AD 2006–09–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires modifying the wiring on an alternating current (AC) service bus contactor that is located in the avionics bay. This AD results from incidents of short circuit failures of certain AC contactors located in the avionics bay. We are issuing this AD to prevent short circuit failures of certain AC contactors, which could result in arcing and consequent smoke or fire.

**DATES:** This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 26, 2006.

We must receive comments on this AD by June 26, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The TCCA advises that there have been seven incidents of short circuit failures of Tyco Hartman alternating current (AC) contactors 1K4XD and K4XA, located in the avionics bay on Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. In several cases, arcing, which initiated due to the presence of contaminants between the power studs, resulted in a fire, which continued until power to the contactor was interrupted, either by the wire being burned through or by the generator falling off-line. Short circuit failures of AC contactors, if not prevented, could result in arcing, which could result in smoke or fire.

### Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–24–121, dated April 18, 2006. The service bulletin describes procedures for modifying the wiring on AC service bus contactor K4XA. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The TCCA mandated the service bulletin and issued Canadian airworthiness directive CF–2006–07, dated April 19, 2006, to ensure the continued airworthiness of these airplanes in Canada.

**FAA's Determination and Requirements of This AD**

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept the FAA informed of the situation described above. We have examined the TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent short circuit failures of certain AC contactors which could result in arcing and consequent smoke or fire. This AD requires accomplishing the actions specified in the service information described previously.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24586; Directorate Identifier 2006–NM–100–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

**Examining the Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2006–09–08 Bombardier, Inc. (Formerly Canadair):** Amendment 39–14579. Docket No. FAA–2006–24586; Directorate Identifier 2006–NM–100–AD.

**Effective Date**

(a) This AD becomes effective April 26, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7990 inclusive and 8000 and subsequent; certificated in any category.

**Unsafe Condition**

(d) This AD results from incidents of short circuit failures of certain alternating current (AC) contactors located in the avionics bay. We are issuing this AD to prevent short circuit failures of certain AC contactors, which could result in arcing and consequent smoke or fire.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Modification**

(f) Within 90 days after the effective date of this AD, modify the wiring on AC service bus contactor K4XA, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–24–121, dated April 18, 2006.

**Previous Actions Accomplished According to Modification Package**

(g) Actions accomplished before the effective date of this AD according to Bombardier Modification Summary Package IS601R2450–0025, dated December 23, 2005,

are considered acceptable for compliance with the action specified in paragraph (f) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(i) Canadian airworthiness directive CF–2006–07, dated April 19, 2006, also addresses the subject of this AD.

**Material Incorporated by Reference**

(j) You must use Bombardier Alert Service Bulletin A601R–24–121, dated April 18, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 21, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–3990 Filed 4–25–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD13–06–016]**

**RIN 1625–AA00**

## Safety Zone: M/V ZHEN HUA 1 Crane Delivery Operation, Columbia River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final Rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone around the M/V ZHEN HUA 1 while underway, anchored or moored on the Columbia River. Captain of the Port, Portland Oregon is taking this action to safeguard individuals and vessels from safety hazards associated with the transit of the M/V ZHEN HUA 1 while it is transporting a gantry crane on the Columbia River. This rule will provide a moving safety zone around the vessel for the purpose of safe and efficient navigation.

**DATES:** This rule is effective from 12 a.m. (PDT) on April 24, 2006 through 12 a.m. (PDT) on May 8, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD13–06–016] and are available for inspection or copying at U.S. Coast Guard Sector Portland, 6767 North Basin Ave., Portland, Oregon 97217 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lumpkin, Coast Guard Sector Portland, 6767 North Basin Ave., Portland, Oregon 97217, 503–240–9301.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Because of the unpredictable nature of the weather, the sponsor did not notify the Coast Guard until recently with the final details of the operation. The M/V ZHEN HUA 1 will be severely restricted in its ability to maneuver while transiting the Columbia River and will be a hazard to navigation and vessel traffic in the vicinity of the vessel. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

### Background and Purpose

The Coast Guard is establishing a temporary safety zone to ensure the safety of vessel traffic in the area of the M/V ZHEN HUA 1 as it enters and transits the Columbia River to the Port of Portland Container Terminal T–6. The safety zone is necessary because the beam of the vessel with the cargo exceeds 412 feet.

The Coast Guard, through this action, intends to assist and ensure the safe transit of the M/V ZHEN HUA 1 because of the large area this vessel with its cargo will occupy as it transits the Columbia River. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. Entry into the zone will be prohibited unless authorized by the Captain of the Port. The Captain of the Port may be assisted by other Federal and local agencies.

### Discussion of Rule

The M/V ZHEN HUA 1 will be transiting upbound on the Columbia River from the mouth of the river to the Port of Portland Container Terminal T–6. The vessel is transporting a gantry crane that exceeds the beam of the vessel on the port side by 95 feet and on the starboard side by 193 feet. Total beam for the vessel with the crane aboard is 412 feet. Maximum height of the crane aboard the vessel will exceed 225 feet. Because of this beam width and height of its cargo, the M/V ZHEN HUA 1 will be severely restricted in its ability to maneuver. The Coast Guard is establishing a safety zone encompassing a 100 hundred yard radius around the M/V ZHEN HUA 1. This operation is necessary for the safe navigation of vessel traffic due to the beam of the crane and the hazardous conditions associated with it. During transit under the bridges, safety concerns will be heightened due to the small margin of error for safe passage.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the rule encompasses a limited area for a limited duration around the M/V ZHEN HUA 1 while transiting upbound on the Columbia River. The moving safety zone around this vessel will impinge on commercial traffic lanes, but will be of short duration.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration of time and maritime advisories will be issued allowing mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Columbia River in which the M/V ZHEN HUA 1 is operating during the periods this safety zone is enforced.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you believe it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A temporary section 165.T13–006 is added to read as follows:

**§ 165.T13–006 Safety Zone Regulations; M/V ZHEN HUA 1**

(a) *Location*. The following area is a safety zone: All waters of the Columbia River within a 100 yard radius centered on the M/V ZHEN HUA 1 while the vessel is underway, anchored or moored.

(b) *Regulations.* In accordance with the general regulations in section 165.23, no person or vessel may enter or remain within this safety zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement Period*. This section will be enforced from 12 a.m. (PDT) on April 24, 2006 through 12 a.m. (PDT) on May 8, 2006 while the M/V ZHEN HUA 1 is underway, anchored or moored in the Columbia River.

Dated: April 17, 2006.

**Patrick G. Gerrity,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.*

[FR Doc. 06–3933 Filed 4–25–06; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD13–06–012]**

**RIN 1625–AA00**

## Safety Zone: Trojan Power Plant Cooling Tower Implosion, Rainier, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Columbia River in the vicinity of the Trojan Power Plant. The Captain of the Port, Portland, Oregon is taking this action to safeguard individuals and vessels from safety hazards associated with the implosion of the Trojan Power Plant cooling tower. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 6 a.m. to 8 a.m. on May 21, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD13–06–012] and are available for inspection or copying at U.S. Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, Oregon 97217–3992 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Shadrack Scheirman, Chief Port Operations, USCG Sector Portland, 6767 N. Basin Ave., Portland, Oregon 97217; telephone number (503) 240–9311.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and making this rule effective less than 30 days after publication in the **Federal Register** because the Coast Guard did not receive adequate prior notification of the operation from the event sponsor. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the tower implosion.

If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

### Background and Purpose

The Coast Guard is establishing a temporary safety zone regulation in the interest of public and maritime safety. The implosion of the Trojan Power Plant cooling tower will produce a dust cloud that may spread across the Columbia River. Depending upon wind speed and direction on the day of the implosion, the dust cloud could be a hazard to the navigation of vessel traffic in the area.

*Discussion of Rule*

This rule, for safety concerns, will control individuals and vessel movement in a regulated area surrounding the Trojan Power Plant cooling tower. Due to its close proximity to the Columbia River, the implosion operation will pose a hazard to navigation. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. The Captain of the Port will enforce this safety zone with the assistance of other Federal, State and local law enforcement agencies.

*Regulatory Evaluation*

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary. This expectation is based on the fact that this rule will be in effect for the minimum time necessary to safely conduct the implosion operation. While this rule is in effect, traffic will be allowed to pass though the zone with the permission of the Captain of the Port or his designated representatives on-scene.

*Small Entities*

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Columbia River at the corresponding time as drafted in this rule.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Although the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone at selected times with the permission of the Captain of the Port or his designated representative on-scene; before the enforcement period, we will issue maritime advisories widely available to users of the river.

Because the impact of this rule is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant

economic impact on a substantial number of small entities.

*Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*Collection of Information*

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

*Federalism*

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

*Unfunded Mandates Reform Act*

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

*Taking of Private Property*

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

*Civil Justice Reform*

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

*Protection of Children*

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

*Indian Tribal Governments*

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

*Energy Effects*

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

*Technical Standards*

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

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

*Environment*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A temporary section 165.T13–005 is added to read as follows:

### 165.T13–005 Safety Zone: Trojan Power Plant Water Cooling Tower Implosion, Rainier, Oregon

(a) *Location.* The following area is designated a safety zone: All waters of the Columbia River between river miles 70–75.

(b) *Enforcement period.* This rule will be in effect from 6 a.m. to 8 a.m. on May 21, 2006.

(c) *Regulations.* In accordance with the general regulations in section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port of his designated representatives.

(d) *Enforcement.* (i) The Coast Guard Patrol Commander will be on-scene to ensure the safety of all vessels on the water in the vicinity of the area during the operation and may be assisted by other federal, State or local law

enforcement agencies. (ii) The Captain of the Port will broadcast status updates for this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio Channel 22 (157.1 MHz and through the means required under 5 U.S.C. 553.

Dated: April 17, 2006.

**Patrick G. Gerrity,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.*

[FR Doc. 06–3934 Filed 4–25–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AL69**

### Reservists' Education: Revision of Eligibility Requirements for the Montgomery GI Bill—Selected Reserve

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of Veterans Affairs (VA) published a document in the **Federal Register** on January 10, 2006 (71 FR 1496), revising eligibility requirements for the Montgomery GI Bill—Selected Reserve program. In that document, we inadvertently removed paragraphs (e)(2) through (e)(4) of § 21.7550 when we revised redesignated paragraph (e)(1). This document reinstates the dropped regulatory text of those paragraphs.

**DATES:** Effective on January 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brandye R. Kidd, Management and Program Analyst, Department of Veterans Affairs (225C), 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7420.

**SUPPLEMENTARY INFORMATION:** The Department of Veterans Affairs (VA) made revisions to 38 CFR 21.7550(e) in order to update the regulations to reflect the date that reservists would no longer be eligible for benefits under the Montgomery GI Bill—Selected Reserve program. In making the necessary adjustments to reflect the appropriate time limits, paragraphs (e)(2) through(e)(4) of § 21.7550 were accidentally removed. A typographical error occurred in the amendatory instruction to the Office of Federal Register editor. We instructed the editor ''to revise redesignated paragraph (e)'' when it was our intention only to revise redesignated paragraph (e)(1). Consequently, the revised regulatory text of redesignated paragraph (e)(1) replaced paragraphs (e)(2) through (e)(4). This document reinstates the regulatory text of paragraphs (e)(2) through (e)(4) of § 21.7550.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, 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: April 19, 2006.

**Robert C. McFetridge,**

*Acting Assistant to the Secretary for Regulation Policy and Management.*

■ Accordingly, 38 CFR part 21, subpart L, is amended as follows:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart L—Educational Assistance for Members of the Selected Reserve

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

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

■ 2. Amend § 21.7550 by adding paragraphs (e)(2) through (e)(4) to read as follows:

**§ 21.7550 Ending dates of eligibility.**

* * * * *

(e) * * *

(2) The conditions referred to in paragraph (e)(1) of this section for ceasing to be a member of the Selected Reserve are:

(i) The deactivation of the reservist's unit of assignment; and

(ii) The reservist's involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 10143(a).

(3) The provisions of paragraphs (e)(1) and (e)(2) of this section do not apply if the reservist ceases to be a member of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist ceases, under adverse conditions, to be a member of the Selected Reserve.

(4) A reservist's period of eligibility will expire if he or she is a member of a reserve component of the Armed Forces and (after having involuntarily ceased to be a member of the Selected Reserve) is involuntarily separated from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist is involuntarily separated under adverse conditions from the Armed Forces.

* * * * *

[FR Doc. 06–3910 Filed 4–25–06; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 174 and 180

**[EPA–HQ–OPP–2005–0282; FRL–7772–7]**

### Bacillus Thuringiensis VIP3A Insect Control Protein and the Genetic Material Necessary for its Production in cotton; Extension of a Temporary Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus Thuringiensis* VIP3A Insect Control Protein in cotton when applied or used as a plant incorporated protectant. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an extension to the existing temporary exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus Thuringiensis* VIP3A Insect Control Protein. The temporary tolerance exemption will expire on May 1, 2007. This regulation also removes 40 CFR 180.1247 *Bacillus Thuringiensis* VIP3A Insect Control Protein and establishes 40 CFR 174.452 *Bacillus Thuringiensis* VIP3A Insect Control Protein under Part 174—Procedures and Requirements for Plant-incorporated protectants.

**DATES:** This regulation is effective April 26, 2006. Objections and requests for hearings must be received on or before June 26, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY**

**INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0282. All documents in the docket are listed on the *regulations.gov* website. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

## II. Background and Statutory Findings

In the **Federal Register** of November 30, 2005 (70 FR 71842) (FRL–7743–1), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3G6547) by Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. The petition requested that 40 CFR part 180 be amended by extending an existing temporary exemption from the requirement of a tolerance for residues of *Bacillus Thuringiensis* VIP3A Insect Control Protein. This notice included a summary of the petition prepared by the petitioner Syngenta Seeds, Inc. There were no comments received in response to the notice of filing.

This regulation also removes 40 CFR 180.1247 and establishes 40 CFR 174.452 *Bacillus Thuringiensis* VIP3A Insect Control Protein under Part 174—Procedures and Requirements for Plant-incorporated protectants, because EPA is gradually moving the plant-incorporated protectant exemptions from part 180 to part 174.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In the initial petition requesting the establishment of a temporary exemption from the requirement of a tolerance, data were submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure VIP3A proteins. This is similar to the Agency position regarding toxicity of *Bacillus thuringiensis* products from which this vegetative-insecticidal protein is derived. The requirement for residue data for the derivative protein is

consistent with residue data requirements in 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III). The acute oral toxicity data submitted support the prediction that the VIP3A protein would be non-toxic to humans. Male and female mice (11 of each) were dosed with the test material at 5,050 milligrams/kilogram/body weight (mg/kg/bwt). Outward clinical signs were observed and body weights recorded throughout the 14–day study. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock and R. Engler (1992)). Therefore, since no effects were shown to be caused by this vegetative-insecticidal protein, even at relatively high does levels, it is not considered toxic.

Since VIP3A is a protein, allergenic sensitivities were considered. The amino acid sequence of VIP3A is not homologous to that of any known or putative allergens described in public data bases. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases and may be glycosylated and present at high concentrations in the food. Data have been submitted that demonstrate that the VIP3A protein appears to be present in multiple commercial formulations of Bt microbial insecticides at concentrations estimated to be ca. 0.4, 32 parts per million (ppm). This conclusion is based on the presence of proteins of the appropriate molecular weight and immunoreactivity (by SDS-PAGE and western blot), and quantitation by Enzyme Linked Immunosorbent Assay (ELISA). Therefore, it is conceivable that small quantities of VIP3A protein are present in the food supply because VIP3A (or a very similar protein, based on size and immunoreactivity) appears to be present in currently registered insecticide products used on food crops, including fresh market produce. These commercial Bt products are all exempt from food and feed tolerances.

## IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

### *A. Dietary Exposure*

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the vegetative-insecticidal protein chemical residue, and exposure from non-occupational sources.

1. *Food*. Oral exposure, at very low levels, may occur from ingestion of processed cotton seed by products. However, a lack of mammalian toxicity and the digestibility of the vegetative-insecticidal protein have been demonstrated. The use sites of the VIP3A proteins are all agricultural for control of insects.

2. *Drinking water exposure*. Oral exposure, at very low levels, may occur from drinking water. However, a lack of mammalian toxicity and the digestibility of the vegetative-insecticidal protein have been demonstrated. The use sites for the VIP3A proteins are all agricultural for control of insects.

### *B. Other Non-Occupational Exposure*

1. *Dermal exposure*. Exposure via the skin is not likely since the vegetative-insecticidal protein is contained within plant cells, which essentially eliminates this exposure route or reduces these exposure routes to negligible.

2. *Inhalation exposure*. Exposure via inhalation is not likely since the vegetative-insecticidal protein is contained within plant cells, which essentially eliminates this exposure route or reduces this exposure route to negligible.

## V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to the VIP3A protein, it is reasonable to conclude that there are no cumulative effects for this vegetative-insecticidal protein.

## VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety (MOS) will be safe for infants and children. In this instance, based on the available data, the Agency concludes that there is a finding of no toxicity for VIP3A proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern, and as a result, the provision requiring an additional MOS does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

## VII. Other Considerations

### *A. Endocrine Disruptors*

The safety data submitted show no adverse effects in mammals, even at very high dose levels, and support the prediction that the VIP3A protein would be non-toxic to humans. Therefore no effects on the immune or endocrine systems are expected.

### *B. Analytical Method(s)*

Validated methods for extraction and direct ELISA analysis of VIP3A in cotton seed have been submitted and found acceptable by the Agency.

### *C. Codex Maximum Residue Level*

No Codex maximum residue levels exist for the vegetative- insecticidal protein *Bacillus thuringiensis* VIP3A protein and genetic material necessary for its production in cotton.

## VIII. Conclusions

The Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the plant incorporated protectant, *Bacillus thuringiensis* VIP3A protein and genetic material necessary for its production in cotton, when used in accordance with label directions as a plant incorporated protectant.

## IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0282 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 26, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0282, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## X. Statutory and Executive Order Reviews

This final rule establishes an extension to an existing temporary exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**XI. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: April 14, 2006.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

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

## PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.452 is added to subpart W to read as follows:

### § 174.452 Bacillus thuringiensis VIP3A protein and the genetic material necessary for its production; temporary exemption from the requirement of a tolerance.

*Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production is temporarily exempt from the requirement of a tolerance when used as a vegetative-insecticidal protein in cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. Genetic material necessary for its production means the genetic material which comprise genetic encoding the VIP3A protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control expression of the genetic material encoding the VIP3A protein. This temporary exemption from the requirement of a tolerance expires May 1, 2007.

## PART 180—[AMENDED]

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

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

### § 180.1247 [Removed].

■ 2. Section 180.1247 is Removed.

[FR Doc. 06–3852 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2005–0322; FRL–8065–1]**

## Benzaldehyde, Captafol, Hexaconazole, Paraformaldehyde, Sodium dimethyldithiocarbamate, and Tetradifon; Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking specific tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee repellent benzaldehyde. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. Also, stakeholders have withdrawn their support for import tolerances for captafol and hexaconazole. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 39 tolerances and tolerance exemptions of which 38 count as tolerance reassessments toward the August, 2006 review deadline.

**DATES:** This regulation is effective April 26, 2006. Objections and requests for hearings must be received on or before June 26, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0322. All documents in the docket are listed on the www.regulations.gov website. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the online instructions.) Although listed in the

index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on theInternet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

**FOR FURTHER INFORMATION CONTACT:**

Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

• Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

## II. Background

### *A. What Action is the Agency Taking?*

In the **Federal Register** of December 23, 2005 (70 FR 76224) (FRL–7751–3), EPA issued a proposed rule to revoke certain tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee repellent benzaldehyde. Also, the proposal of December 23, 2005 provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards.

In this final rule, EPA is revoking these tolerances and tolerance exemptions because they pertain to uses no longer current or registered under FIFRA in the United States and do not pertain to commodities currently imported into the United States. The tolerances and tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of December 23, 2005 (70 FR 76224), EPA received one comment during the 60–day public comment period, as follows:

*Benzaldehyde—comment by WSDA*. EPA received a comment from the Washington State Department of Agriculture (WSDA), which requested that the Agency determine whether revocation of the tolerance exemption in 40 CFR 180.1229 for benzaldehyde, when used as a bee repellent, would render honey extracted from hives treated with benzaldehyde to be considered adulterated. WSDA stated that benzaldehyde is still being distributed for use by beekeepers and requested retention of the tolerance exemption if its revocation would cause extracted honey from treated hives to be adulterated. In an earlier communication, just prior to the comment submission, WSDA stated that benzaldehyde use as a bee repellent was not a pesticide use under 40 CFR 152.8.

*Agency response*. A tolerance or an exemption from the requirement of a tolerance is a requirement under FFDCA section 408 for pesticide residue in or on food. There have been no active pesticide registrations in the United States for benzaldehyde since 1991, and therefore the tolerance exemption in 40 CFR 180.1229 is no longer needed. EPA agrees with WSDA that use of a product intended to force bees from hives for the collection of honey crops is not considered to be a pesticidal use under 40 CFR 152.8 because it is not intended for use against ''pests'' as defined in 40 CFR 152.5. Such a non-pesticidal use does not require a tolerance or tolerance exemption. EPA expects that revocation of the tolerance exemption in 40 CFR 180.1229 would mean that such use of benzaldehyde, in a product which contains no pesticide active ingredients, intended as a bee repellent in the collection of honey crops, would not render them adulterated under FFDCA section 408. Therefore, the Agency believes that such benzaldehyde treatment of honeycombs even after the revocation of the tolerance exemption in 40 CFR 180.1229 would not prevent sale of honey commodities. Consequently, EPA is revoking the tolerance exemption in 40 CFR 180.1229 for residues of benzaldehyde when used as a bee repellent in the harvesting of honey. Persons interested in the regulation of benzaldehyde as a food additive under FFDCA section 409 should consult the Food and Drug Administration.

No comments were received by the Agency concerning the following.

1. *Captafol.* The Republic of Indonesia's Indonesian Ministry of Agriculture had commented on a proposed rule to revoke tolerances for captafol and several other pesticides, published in the **Federal Register** of June 9, 1993 (58 FR 32320) (FRL–4183–6). The commenter had stated that the use of captafol was being re-evaluated in that country, might undergo a phase out, and requested that EPA not revoke the onion, potato, and tomato tolerances in 40 CFR 180.267. In the **Federal Register** of July 21, 1999 (64 FR 39049) (FRL–6092–7), EPA published a final rule in which it revoked specific captafol tolerances and responded to the 1993 comment received from the Republic of Indonesia by stating that the Agency would not take final action on the three tolerances in 40 CFR 180.267 for residues of captafol on onion, potato, and tomato at that time. In April 2005, EPA determined that captafol has not been registered in Indonesia since 1998. Also, the Indonesian Ministry of Agriculture verified that it no longer had a continuing interest in the three captafol tolerances for importation purposes. Because the tolerances are no longer needed, EPA is revoking the tolerances in 40 CFR 180.267 for residues of the fungicide captafol in or on onion, potato, and tomato.

2. *Hexaconazole*. There have been no active U.S. registrations for hexaconazole on banana since 1992. Recently, Syngenta has informed EPA that it has voluntarily chosen to no longer support the hexaconazole tolerance on banana for the purpose of importation. Consequently, the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in 40 CFR 180.488 for residues of the fungicide hexaconazole in or on banana.

3. *Paraformaldehyde*. The last active registration for paraformaldehyde use as an insecticide for the soil treatment of sugar beets was canceled in 1989 due to non-payment of the maintenance fee, and therefore the tolerance exemptions are no longer needed. EPA is revoking the tolerance exemptions in 40 CFR 180.1024 for residues of the insecticide paraformaldehyde in or on beet, sugar, roots and beet, sugar, tops, when applied to the soil not later than planting.

4. *Sodium dimethyldithiocarbamate*. The last active registration for use of sodium dimethyldithiocarbamate on melons was canceled in 1993 due to non-payment of the maintenance fee, and therefore the tolerance is no longer needed. EPA is revoking the tolerance in 40 CFR 180.152 for residues of the fungicide sodium dimethyldithiocarbamate, calculated as zinc ethylenebisdithiocarbamate, in or on melon.

5. *Tetradifon*. The last tetradifon registrations were canceled in 1990 due to non-payment of maintenance fees. Uniroyal Chemical Company (which later became part of Crompton Corporation) had commented to a proposed revocation of tetradifon tolerances published in the **Federal Register** of August 1, 2001 (66 FR 39705) (FRL–6786–4). Uniroyal noted that it had submitted certain studies to EPA in 1998 and 1996, and requested that EPA not revoke any of the tetradifon tolerances in 40 CFR 180.174. In the **Federal Register** of January 24, 2003 (68 FR 3425) (FRL–7187–3), EPA published a final rule and responded to Uniroyal's comment by stating that the Agency would not take final action on the tetradifon tolerances in 40 CFR 180.174 at that time. During follow-up communication, EPA received a letter from Crompton Corporation (now Chemtura Corporation) that it no longer supported retention of the tolerances for tetradifon. Because the tolerances are no longer needed, EPA is revoking all the tolerances in 40 CFR 180.174 for residues of the insecticide tetradifon in or on apple; apricot; cherry; citron, citrus; crabapples; cucumber; fig; fig, dried fruit; grapefruit; grape; hop, dried; hop, vine; lemon; lime; meat; melon; milk; nectarine; orange, sweet; peach; pear; peppermint; plum, prune, fresh; pumpkin; quince; spearmint, tops; strawberry; tangerine; tea, dried; tomato; and winter squash.

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

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

### *C. When Do These Actions Become Effective?*

These actions become effective on the date of publication of this final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the

level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

*D. What is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of April 18, 2006, EPA has reassessed over 8,070 tolerances. This document revokes a total of 39 tolerances and tolerance exemptions of which 38 are counted as tolerance reassessments toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

## III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

## IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0322 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 26, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0322, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## V. Statutory and Executive Order Reviews

In this final rule, EPA revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply,*

*Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this final rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### VI. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: April 11, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

### §§ 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 [Removed]

■ 2. Sections 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 are removed.

[FR Doc. 06–3853 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2006–0267; FRL–7772–6]**

## Pantoea Agglomerans Strain C9–1; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the *Pantoea agglomerans* strain C9–1 on pears and apples when applied or used as a microbial pesticide. Nufarm, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level

for residues of *Pantoea agglomerans* strain C9–1.

**DATES:** This regulation is effective April 26, 2006. Objections and requests for hearings must be received on or before June 26, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit X. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0267. All documents in the docket are listed on the *regulations.gov* website. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions). Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

**FOR FURTHER INFORMATION CONTACT:**

Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

## II. Background and Statutory Findings

In the **Federal Register** of June, 13, 1997 (62 FR 32331) (FRL–5721–6), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F4817) by Nufarm, Inc., (formerly Plant Health Technologies), 1333 Burr Ridge Parkway, Suite 125A, Burr Ridge, IL 60527. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Pantoea agglomerans* (*P. agglomerans*) strain C9–1. This notice included a summary of the petition prepared by the petitioner, Nufarm, Inc. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

*Pantoea agglomerans* strain C9–1 was originally isolated from apple stem tissue in an apple orchard in Michigan in 1981. Subsequently, a natural spontaneous mutant derived from the original strain was obtained which had

streptomycin and rifampicin resistance. This strain retained the designation C9–1 and was not derived through genetic engineering. When first isolated, this strain was identified as *Erwinia herbicola* based on GC-FAME (gas chromatography-fatty acid methyl ester) analysis and placed in GC subgroup B. Members of the group described as *E. herbiocola/lathyri-Enterobacter agglomerans* are found in soil, water and air, and are associated with plants and animals, including humans as commensal microbes. Following GC-FAME and substrate utilization analyses, and most importantly, a restructuring of the bacterial taxonomy of this group of microbes, this isolate is now considered a strain of *Pantoea agglomerans*. No reports of plant pathogenicity exist for the *P. agglomerans* species.

The registrant is seeking to register *Pantoea agglomerans* strain C9–1 to control fire blight in apples and pears. Fire blight is considered one of the most destructive diseases of fruit trees in North America. It occurs sporadically and unpredictably and occasionally reaches epidemic levels. A severe outbreak can seriously damage or kill mature pear, apple, or crab apple trees in one season.

1. *Acute oral toxicity – rats (OPPTS 870.1100)*. Sprague-Dawley Rats were dosed at 5g/kg with the test substance *Pantoea agglomerans* strain C9–1 and observed for 14 days Master Record Identification Number ((MRID) 442120–02 (Ref. 1)). All animals gained weight during the study and no clinical manifestations of treatment were noted. Gross necropsy revealed no indications of treatment-related pathology or any unusual findings. It is concluded that *Pantoea agglomerans* strain C9–1 is not acutely toxic to rats following oral administration.

2. *Acute oral toxicity/pathogenicity – rat study (OPPTS 885.3050)*. Sprague-Dawley CD rats were challenged orally with *Pantoea agglomerans* C9–1 and heat killed cells (KTS) as an additional control group. Nine female and 9 male rats were also placed in a naive control (NC) group (no dosing) and 6 rats of each sex were placed into a shelf-control (SC) group (placed adjacent to treated animals, but not dosed) (MRID 442120–03 (Ref.2)). Organs were sampled on days 0, 3 and 7. Since no bacteria were recovered from the samples, the study was terminated on day 10. No deaths of animals occurred during the course of this study and no significant clinical findings were noted. All animals gained weight and relative organ weights were normal with no significant treatment effects observed. *Pantoea agglomerans* strain C9–1 was considered to clear rapidly from the test animal in that it was never detected. *Pantoea agglomerans* strain C9–1 is considered to be non-toxic following oral challenge.

3. *Acute pulmonary toxicity/pathogenicity – rat (OPPTS 885.3150)*. Fifty rats, 25 female and 25 male) received, by intratracheal instillation, a dose of 9.83 x $10^7$ or 9.00 x $10^7$ colony forming units (cfu) of *Pantoea agglomerans* strain C9–1 in a 0.1 milliliter (mL) volume (MRID 442120–05 (Ref.4)). No adverse clinical signs were recorded for any of the animals during the study. Four rats died during dosing and were immediately replaced. The rats were sacrificed at 7 days and subjected to necropsy. No clinical signs related to the test organism or macroscopic abnormalities were observed in the rats. It can be concluded since no test substance was recovered from any animals that this organism does not appear to be toxic, infective, and/or pathogenic to rats at this high does level. This study is considered acceptable and classified as Toxicity Category IV (BPPD DER 05/17/02).

4. *Acute dermal toxicity – rabbits (OPPTS 870.2500 and OPPTS 885.3100)*. Approximately 2 grams (g) of test material was applied to the dorsal epidermis of 10 New Zealand White Rabbits and maintained there for 24 hours (MIRD 442120–04 (Ref.3)). All rabbits exhibited very slight to well-defined erythema and three rabbits exhibited very slight edema. By day 10 all surviving rabbits (9 of 10) had cleared of any dermal irritations and remained this way throughout the end of the study (day 14). No edema scores greater than 1 and no erythema scores greater than 2 were recorded during the study. One rabbit, which died at day 10, revealed no gross lesions upon necropsy. This study is considered acceptable and classified as Toxicity Catergory IV for irritation and Toxicity Category III for Toxicity (BPPD DER 05/17/02)

5. *Primary eye irritation (OPPTS 870.2400)*. Six New Zealand White Rabbits were administered 0.1 g of test substance into the right eyelid which was washed out after 24 hours (MRID 442120–07 (Ref.5)). No mortality, corneal lesions or iridal effects were noted at any time during the study. *Pantoea agglomerans* C9–1 is considered to be a mild eye irritant. This study is considered acceptable and classified as Toxicity Category III (BPPD DER 05/17/02).

6. *Data waiver requests*. Data waiver requests were made for the following requirements for the Technical Grade of the Active Ingredient/Manufacturing-use Product (TGAI/MP) and Experimental Product (EP):

(a) Acute Inhalation (OPPTS 870.1300);

(b) Acute Intravenous (IV), Intracerebral (IC), Intraperitoneal (IP) injection Toxicity/Pathogenicity (OPPTS 885.3200);

(c) Cell Culture (OPPTS 885.3500);

(d) Immune Response (OPPTS 880.3800);

(e) Hypersensitivity study;

(f) Hypersensitivity Incidents (OPPTS 885.3400).

i. *Acute inhalation toxicity/pathogenicity*. The registrant cited the acute pulmonary toxicity/pathogenicity study (see Unit III.3., above) to justify waiving the acute inhalation study. In the acute pulmonary toxicity/pathogenicity study *Pantoea agglomerans* strain C9–1, was not found in any organs or tissues which indicates that the active ingredient cleared tissues and was not toxic, infective, or pathogenic to rats when instilled intratracheally. Additionally, when this product is applied, applicators will be required to wear the necessary protective equipment to prevent inhalation, and this justifies granting this request to waive acute inhalation data requirements.

ii. *Acute IV/IP/IC study*. In an acute oral toxicity/pathogenicity study (see Unit III.1. and 2. above), no clinical signs of toxicity were observed in rats and no *Pantoea agglomerans* strain C9–1 was recovered from organs or tissues. These data show that *Pantoea agglomerans* strain C9–1 was considered to clear rapidly from the test animal in that it was never detected. The active ingredient *Pantoea agglomerans* strain C9–1 is considered to be non-toxic. Based on the low toxicity potential indicated by these observations, the request to waive the acute IP study was granted.

iii. *Cell culture*. This study is required for a virus and is not required for a bacterial active ingredient such as *Pantoea agglomerans* strain C9–1. The request to waive this data requirement was granted.

iv. *Immune response*. The lack of pathogenicity seen in the acute oral toxicity/pathogenicity study with the active ingredient indicates the immune system was not adversely affected by *Pantoea agglomerans* strain C9–1. Based on these considerations, the justifications to support the request to waive data requirements for the immune response studies for the TGAI/MP are acceptable.

v. *Hypersensitivity study*. No incidents of hypersensitivity have

occurred during the research, development, or testing of *Pantoea agglomerans* strain C9–1 or the end use product, Blightban. A hypersensitivity study is not required at this time, but may be required in the future if there are reports of hypersensitivity incidents associated with this active ingredient used in pesticides.

vi. *Hypersensitivity incidents (OPPTS 885.3400)*. The registrant requested to waive reports of hypersensitivity incidents, because no incidents of hypersensitivity associated with the TGAI or the EP have been reported. However, the registrant agreed to report hypersensitivity incidents, should they occur in the future. This guideline requirement is satisfied at this time. In order to comply with FIFRA requirements under Section 6(a)(2), any incident of hypersensitivity associated with the use of this pesticide must be reported to the Agency. This data requirement has not been waived.

7. *Subchronic, chronic toxicity and oncogenicity, and residue data*. Based on the data generated in accordance with the Tier I data requirements set forth in 40 CFR 158.740(c), the Tier II and Tier III data requirements were not triggered and, therefore, not required in connection with this action. In addition, because the Tier II and Tier III data requirements were not required, the residue data requirements set forth in 40 CFR 158.740(b) also were not required.

## IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

### *A. Dietary Exposure*

Use of *Pantoea agglomerans* strain C9–1 is not likely to cause any harm via consumption of food or feed treated with the microbial pesticide, which is not applied directly to food as discussed below.

1. *Food*. Residues of *Pantoea agglomerans* strain C9–1 are not expected on treated food commodities from the proposed use patterns. The product, Blightban, containing *Pantoea agglomerans* strain C9–1, is applied at bloom followed by a second application at first petal fall-full bloom. After Blighban is applied, the pesticide becomes non-viable very rapidly, which causes the need for more than one application. The pesticide itself is not in direct contact with the food commodities. This pesticide is applied prior to fruiting. There is no post-harvest treatment directly to the food commodities. Furthermore, the active ingredient is not a systemic pesticide. Thus, detectable residues of *Pantoea agglomerans* strain C9–1 are not expected on treated fruit trees or their food commodities. Furthermore, as previously stated, *Pantoea agglomerans* strain C9–1 is found in soil, water and air. Data submissions to the Agency show that residues of the *Pantoea agglomerans* strain C9–1 are not found on the food commodities. Finally, as discussed in Unit III, the acute oral tests demonstrate low toxicity potential via dietary exposure to this Toxicity Category IV pesticide. Hence, even if the pesticide was present in or on food commodities, exposure via the dietary route is not expected to cause any harm. Therefore, the Agency has decided that dietary exposure from the proposed uses of *Pantoea agglomerans* strain C9–1 is not likely to adversely affect the U.S. adult population, infants and children.

2. *Drinking water exposure*. No drinking water exposure is anticipated because of the use pattern and use sites. There are no aquatic use sites permitted for this pesticide, so exposure to drinking water is not expected. Further, there is no evidence of adverse effects from exposure to this organism. Exposure from the proposed use of *Pantoea agglomerans* strain C9–1 is not likely to pose any incremental risk via consumption of drinking water to adult humans, infants and children.

### *B. Other Non-Occupational Exposure*

The proposed product is an end-use product to be commercially used in apple and pear orchards. No non-occupational residential, school or day care exposure is anticipated because of the use pattern of this product. The use of *Panteoa agglomerans* strain C9–1 should result in minimal to non-existent non-occupational risk. No indoor residential, school or daycare uses are permitted on the label of this product.

1. *Dermal exposure*. The low toxicity potential observed in the acute dermal studies discussed above (Unit III), the low exposure potential based on low application rates, and the lack of persistence of the active ingredient, leads EPA to conclude that this pesticide poses minimal risk to human populations via non-occupational dermal exposure. Moreover, potential non-occupational dermal exposure to *Panteoa agglomerans* strain C9–1 is unlikely because the use sites are commercial and agricultural.

As previously discussed in Units III and IV, a lack of hypersensitivity incidents indicates *Panteoa agglomerans* strain C9–1 poses minimal risk to populations via non-occupational dermal exposure. Thus, the Agency does not expect pesticides containing *Panteoa agglomerans* strain C9–1 to pose a non-occupational dermal exposure risk.

2. *Inhalation exposure*. Non-occupational inhalation exposure to the active ingredient itself is not likely to pose an inhalation risk. No treatment-related effects associated with the active ingredient were observed in the pulmonary tests reported above. Based on the low potential for non-occupational inhalation exposure, the Agency does not expect *Pantoea agglomerans* strain C9–1 to pose an inhalation risk.

## V. Cumulative Effects

The Agency has considered the potential for cumulative effects of *Pantoea agglomerans* strain C9–1 and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. As demonstrated in Unit IV.B., *Pantoea agglomerans* strain C9–1 is non-toxic and non-pathogenic to mammals. Because no mechanism of pathogenicity or toxicity in mammals has been identified for this organism, no cumulative effects from the residues of this product with other related microbial pesticides are anticipated.

## VI. Determination of Safety for U.S. Population, Infants and Children

There is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposures to residues of *Pantoea agglomerans* strain C9–1, as a result of its proposed uses. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there appears to be no potential for harm, from this bacterium in its use as a microbial pesticide in apple and pear orchards. Furthermore, the organism is non-toxic and non-pathogenic to animals and humans. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity for acute oral, pulmonary, and dermal effects with no toxicity or infectivity at the doses tested (see Unit III. above). Moreover, potential non-occupational inhalation or dermal exposure is not expected to pose any adverse effects to exposed populations via aggregate and cumulative exposure

(see Units IV. and V.). FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which are often referred to as uncertainty factors, are incorporated into EPA risk assessments either directly, or through the use of a margin of exposure analysis, or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. In this instance, based on all the available information (as discussed in detail above), the Agency concludes that the bacterium, *Pantoea agglomerans* strain C9–1, is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children and adults when *Pantoea agglomerans* strain C9–1 is used as labeled, the Agency has determined that the additional margin of safety is not necessary to protect infants and children, and that not adding any additional margin of safety will be safe for infants and children.

## VII. Other Considerations

### *A. Endocrine Disruptors*

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen and thyroid systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority, to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

The Agency is not requiring information on the endocrine effects of this active ingredient at this time. The Agency has considered, among other relevant factors, available information concerning whether the microorganism may have an effect in humans similar to an effect produced by a naturally occurring estrogen or other endocrine effects. There is no known metabolite produced by this bacterium that acts as an endocrine disruptor. The submitted and cited toxicity/pathogenicity studies in rodents indicate that following injection and pulmonary routes of exposure, no test substance was found in organs or tissues of test animals. This indicates that the body is able to process and clear the active ingredient. The Agency concludes that there will be no incremental adverse effects to the endocrine system.

### *B. Analytical Method(s)*

The acute oral studies discussed above demonstrate that the active ingredient, *Pantoea agglomerans* strain C9–1 does not pose a dietary risk. In addition, the active ingredient is not likely to come into contact with food commodities. Since residues are not expected on treated commodities, the Agency has concluded that an analytical method to detect residues of this pesticide on treated food commodities for enforcement purposes is not needed. Nevertheless, the Agency has concluded that for analysis of the pesticide itself, microbiological and biochemical methods exist and are acceptable for enforcement purposes for product identity of *Pantoea agglomerans* strain C9–1. Other appropriate methods are required for quality control to assure that product characterization, the control of human pathogens and other unintentional metabolites or ingredients are within regulatory limits, and to ascertain storage stability and viability of the pesticidal active ingredient.

### *C. Codex Maximum Residue Level*

There is no Codex maximum residue level for residues of *Pantoea agglomerans* strain C9–1

## VIII. Conclusions

The results of the studies discussed above are sufficient to comply with the requirements of the FQPA. They support an exemption from the requirement of a tolerance for residues of *Pantoea agglomerans* strain C9–1 on apples and pears. In addition, the Agency is of the opinion that, if the microbial active ingredient is used as labeled, aggregate and cumulative exposures are not likely to pose any undue risk. Submitted and cited data show that *Pantoea agglomerans* strain C9–1 do not pose an incremental dietary and non-dietary risk to the adult human U.S. population, children and infants. Therefore, an exemption from tolerance is granted in response to pesticide petition 7F4817.

## IX. MRID Citation References

1. 442120–02. Johnson, W.D. Acute Oral Toxicity Study of Erwinia herbicola Strain C9–1 in Rats (Limit Test).

2. 442120–03. Mega. W.M. Toxicity/Paathogenicity Testing of Erwinia herbicola Strain C9–1 Following Acute Oral Challenge in Rats

3. 442120–04. Johnson, W.D. Acute Dermal Toxicity/Irritation Study of Erwinia herbicola Strain C9–1 in Rabbits

4. 442120–05. Mega, W.M. Toxicity/Pathogenicity Testing of Erwinia herbicola Strain C9–1 Following Acute Intratracheal Challenge in Rats.

5. 442120–07. Johnson, W.D. Primary Eye Irritation of Erwinia herbicola Strain C9–1 in Rabbits.

## X. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0267 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or

delivered to the Hearing Clerk on or before June 26, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2006–0267, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### XII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: April 7, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

■ 2. Section 180.1267 is added to subpart D to read as follows:

**§ 180.1267 Pantoea agglomerans strain C9–1; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of *Pantoea agglomerans* strain C9–1 when used on apples and pears.

[FR Doc. 06–3856 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Parts 301–12, 301–13, and 301–70

**[FTR Amendment 2006–03; FTR Case 2006–303]**

**RIN 3090–AI24**

## Federal Travel Regulation; Travel of an Employee with Special Needs—Services of Attendants

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR), to clarify existing authority under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701–796l, and 5 U.S.C. 3102, that allows agencies to reimburse employees with special needs for expenses incurred for the services of an attendant while on official travel. Specifically, this final rule amends the FTR by adding reimbursement for ''services of an attendant traveling with an employee with special needs'' as a miscellaneous expense item. The FTR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/ftr*.

**DATES:** Effective Date: This final rule is effective April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Umeki Thorne, Office of Governmentwide Policy, Travel Management Policy, at (202) 208–7636. Please cite FTR Amendment 2006–03; FTR case 2006–303.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In order to provide reasonable accommodations for travel of an employee with special needs, agencies are authorized to pay for a variety of travel expenses as needed by the employee. Allowable expenses include the transportation and per diem expenses incurred by a family member or other attendant who must travel with the employee to make the trip possible. Although authorized by existing statutes, the FTR has not included a provision expressly addressing whether or not agencies may reimburse employees for expenses incurred for the actual services performed by an attendant while on travel with the employee. Accordingly, this final rule adds a provision stating that agencies may reimburse employees for the expenses of an attendant as a miscellaneous travel expense.

### B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 301–12, 301–13, and 301–70

Government employees, Travel and transportation expenses.

Dated: March 7, 2006.

**David L. Bibb,**

*Acting Administrator of General Services.*

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 301–12, 301–13, and 301–70 as set forth below:

## PART 301–12—MISCELLANEOUS EXPENSES

■ 1. The authority citation for 41 CFR part 301–12 continues to read as follows:

**Authority:** Authority: 5 U.S.C. 5707.

**§ 301–12.1 [Amended]**

■ 2. Amend section 301–12.1, in the table, in the first column under the heading ''General expenses'', by adding the entry ''Services of an attendant as described in § 301–13.3'' after the entry ''Services of guides, interpreters, and drivers''.

## PART 301–13—TRAVEL OF AN EMPLOYEE WITH SPECIAL NEEDS

■ 3. The authority citation for 41 CFR part 301–13 continues to read as follows:

**Authority:** Authority: 5 U.S.C. 5707.

■ 4. Amend section 301–13.3 by revising the introductory sentence, paragraphs (e) and (f); and adding paragraph (g), and Note to paragraph (g) to read as follows:

**§ 301–13.3 What additional travel expenses may my agency pay under this part?**

Your agency approving official may pay for any expenses deemed necessary by your agency to accommodate an employee with a special need including, but not limited to, the following expenses:

* * * * *

(e) Renting and/or transporting a wheelchair;

(f) Premium-class accommodations when necessary to accommodate your special need, under Subpart B of Part 301–10 of this subchapter; and

(g) Services of an attendant, when necessary, to accommodate your special need.

*Note to § 301–13.3(g)*: For limits on the amount that may be paid to an attendant, other than travel expenses, see 5 U.S.C. 3102 and guidance at *http://www.opm.gov/disability/mngr__6–01–B.asp*.

## PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 5. The authority citation for 41 CFR part 301–70 continues to read as follows:

**Authority:** Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note), Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

■ 6. Revise section 301–70.400 to read as follows:

**§ 301–70.400 How should we authorize and administer the payment of additional travel expenses for an employee with a disability or special need?**

You should authorize and administer the payment to reasonably accommodate employee(s) with disabilities in accordance with the Rehabilitation Act of 1973, as amended (29 U.S.C. 701–796l) and 5 U.S.C. 3102 and Part 301–13 of this chapter. An employee with a special need should be treated the same as an employee with a disability. You must determine that additional travel expenses are necessary to accommodate the employee's needs.

[FR Doc. 06–3913 Filed 4–25–06; 8:45 am]

BILLING CODE 6820–14–S

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Parts 301–51 and 301–74

**[FTR Amendment 2006–02; FTR Case 2006–302]**

**RIN 3090–AI23**

## Federal Travel Regulation; Conference Planning—Prepayment of Registration Fee

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Travel Regulation (FTR) by clarifying that advance payment of discounted conference fees may be treated as an allowable travel advance, and by adding a new section to allow for the reimbursement of the prepayment of ''early bird'' discounted registration fees to attend a conference or training seminar. This clarification is added to allow agencies to take advantage of discounted ''early bird'' registration discounts, thereby saving Government funds. The FTR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/ftr*.

**EFFECTIVE DATE:** This final rule is effective April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Umeki Thorne, Office of Governmentwide Policy, email *umeki.thorne@gsa.gov* or by telephone at (202) 208–7636. Please cite FTR Amendment 2006–02; FTR case 2006–302.

**SUPPLEMENTARY INFORMATION:**

### A. Background

When planning a conference, it is a general practice to offer discounted ''early bird'' registration fees, which are available in the months prior to the beginning of the conference. However, many travelers have expressed reluctance over taking advantage of such offers because of the belief that they cannot claim reimbursement until the conference is over, and they file their travel claims. To take advantage of such specials, agencies may authorize travelers to charge such fees to their individually billed Government sponsored travel cards. Accordingly, this final rule clarifies that authorized travelers are allowed to register early and claim reimbursement for the discounted registration fee as soon as their agencies have approved their attendance at the conference. This final rule also addresses the situations when the traveler fails to attend the conference and identifies the circumstances under which the traveler might have to repay the agency for the registration fee.

### B. Executive Order 12886

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation (FTR) do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 301–51 and 301–74

Government employees, Travel and transportation expenses.

Dated: March 7, 2006.

**David L. Bibb,**

*Acting Administrator for General Services.*

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, the General Services Administration (GSA) amends 41 CFR parts 301–51 and 301–74 as set forth below:

## PART 301–51—PAYING TRAVEL EXPENSES

■ 1. The authority citation for 41 CFR part 301–51 is revised to read as follows:

**Authority:** 5 U.S.C. 5707. Subpart A is issued under the authority of Sec. 2, Pub. L. 105—264, 112 Stat. 2350 (5 U.S.C. 5701 note); 40 U.S.C. 121(c).

**§ 301–51.200 [Amended]**

■ 2. Amend section 301–51.200, paragraph (b), column one, by adding ''advance payment of discounted conference registration fee'' after ''common carrier''.

## PART 301–74—CONFERENCE PLANNING

■ 3. The authority citation for 41 CFR part 301–74 continues to read as follows:

**Authority:** 5 U.S.C. 5707.

■ 4. Sections 301–74.25 and 301–74.26 are added to read as follows:

**§ 301–74.25 May we reimburse travelers for an advanced payment of a conference or training registration fee?**

Yes, you may reimburse travelers for an advanced discounted payment for a conference or training registration fee as soon as you have approved their travel to that event, and they submit a proper claim for the expenses incurred.

**§ 301–74.26 What is the traveler required to do if he/she is unable to attend an event for which they were reimbursed for an advanced discounted payment of a conference or training registration fee?**

In all cases where a traveler is unable to attend an event for which a discounted registration fee was paid and reimbursed in advance of the event, the traveler must seek a refund of the registration fee and repay the agency with any refund received. If no refund is made, the agency must absorb the advanced payment if the traveler's failure to attend the event was caused either by an agency decision or for reasons beyond the employee's control that are acceptable to the agency, *e.g.*, unforeseen illness or emergency. If no refund is made, and the traveler's failure to attend the scheduled event is due to reasons deemed unexcusable by the agency, the traveler must repay the agency for the amount advanced.

[FR Doc. 06–3931 Filed 4–25–06; 8:45 am]

BILLING CODE 6820–14–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 06–610; MB Docket No. 05–246, RM–11263, RM–11309]**

### Radio Broadcasting Services; Hallettsville, Meyersville, San Antonio, and Yoakum, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making*, this *Report and Order* allots Channel 261A to Meyersville, Texas, as a first competitive local aural transmission service. The coordinates for Channel 261A at Meyersville, Texas are 28–54–58 NL and 97–19–37 WL, with a site restriction of 2.0 kilometers (1.2 miles) southwest of Meyersville, Texas. Further, this *Report and Order* reclassifies Station KCYY(FM), San Antonio, Texas, from Channel 262C to Channel 262C0, in order to accommodate the allotment of Channel 261A to Meyersville. The *Report and Order* also denies a counterproposal filed by LaGrange Broadcasting Corporation requesting that Channel 261A be substituted for Channel 260A, Station KTXM(FM), Hallettsville, Texas, and reallotted to Yoakum, Texas, as a second local aural transmission service.

**DATES:** Effective May 1, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order* in MB Docket No. 05–246, adopted March 15, 2006, and released March 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order* makes an editorial change in the existing FM Table of Allotments under Texas by replacing Channel 225C, San Antonio, with Channel 225C1, San Antonio.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Meyersville, Channel 261A; by removing Channel 262C and Channel 225C and adding Channel 262C0 and Channel 225C1 at San Antonio.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06–3906 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 06–728; MB Docket No. 05–31; RM–11150]**

### Radio Broadcasting Services; Paint Rock, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants a petition filed by Charles Crawford requesting the allotment of Channel 296C3 at Paint Rock, Texas, as the community's first local aural transmission service. *See* **SUPPLEMENTARY INFORMATION**.

**DATES:** Effective May 15, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order,* MB Docket No. 05–31, adopted March 29, 2006, and released March 31, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and*

*Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Channel 296C3 can be allotted to Paint Rock in compliance with the Commission's rules provided there is a site restriction of 15 kilometers (9.3 miles) east of the community at coordinates 31–31–15 North Latitude and 99–45–45 West Longitude. *See* 70 FR 8559, published February 22, 2005. The Paint Rock allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Although concurrence has been requested for Channel 296C3 at Paint Rock, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Paint Rock herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.'' or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes.''

To accommodate the Paint Rock allotment, this document also relocates the reference coordinates for vacant FM Channel 296C2 at Big Lake, Texas, which requires a site restriction of 24.1 kilometers (15.0 miles) southwest of the community at coordinates 31–02–00 NL and 101–38–00 WL. This new site for vacant Channel 296C2 at Big Lake is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Although concurrence has been requested for Channel 296C2 at Big Lake, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Big Lake herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.'' or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes.''

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Paint Rock, Channel 296C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06–3905 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 06–730; MB Docket No. 05–270; RM–11268, RM–11272]**

## Radio Broadcasting Services; Aguila, Apache Junction, Buckeye, Glendale, Peoria, Wenden, and Wickenburg, AZ

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** In response to a *Notice of Proposed Rule Making,* this *Report and Order* grants the Petition for Rule Making filed by Black Entrepreneur Association, Inc. (''BEA''), and allots Channel 229C3 to Wickenburg, Arizona. The reference coordinates for Channel 229C3 at Wickenburg are 33–53–49 NL and 112–54–45 WL, with a site restriction of 18.7 kilometers (11.6 miles) southwest of Wickenburg. The *Report and Order* also dismisses the mutually exclusive Petition for Rule Making filed by Entravision Holdings, L.L.C. (''Entravision''). Entravision had proposed to upgrade Channel 296C3, Station KVVA–FM, Apache Junction, Arizona to Channel 296C1 and to reallot Channel 296C1 from Apache Junction to Peoria, Arizona; substitute Channel 229C3 for vacant Channel 297C3 at Aguila, Arizona; upgrade Channel 295A, Station KDVA(FM), Buckeye, Arizona, to Channel 295C3, and reallot Channel 295C3 to Wenden, Arizona; and to reallot Channel 278C, Station KLNZ(FM), from Glendale to Buckeye, Arizona. Entravision's Petition for Rule Making was dismissed because its proposal to upgrade Channel 296C3, Station KVVA–FM, to Channel 296C1 and reallot Channel 296C1 to Apache Junction was mutually exclusive with a protected FM application.

**DATES:** Effective May 15, 2006.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–270, adopted March 29, 2006, and released March 31, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 229C3 at Wickenburg.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06–3849 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 06–622; MB Docket No. 05–291, RM–11270]**

## Radio Broadcasting Services; Addis, Eunice and Franklin, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Radio and Investments, Inc., licensee of Station KDDK(FM), Channel 288A, Franklin, Louisiana, deletes Channel 288A at Franklin, Louisiana, from the FM Table of Allotments, allots Channel 288A at Addis, Louisiana, as the community's first local FM service, and modifies the license of Station KDDK(FM) to specify operation on Channel 288A at Addis. With a consensual change in reference coordinates for Station KEUN–FM, Channel 288A, Eunice, Louisiana, to 30–23–25 NL and 92–29–00 WL, Channel 288A can be allotted to Addis, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.4 km (2.7 miles) southwest of Addis. The coordinates for Channel 288A at Addis, Louisiana, are 30–19–03 North Latitude and 91–17–05 West Longitude.

**DATES:** Effective May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–291, adopted March 29, 2006, and released March 31, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana is amended by adding Addis, Channel 288A and by removing Channel 288A at Franklin.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division Media Bureau.*

[FR Doc. 06–3848 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 06–802; MB Docket No. 05–17; RM–11113, RM–11114]**

### Radio Broadcasting Services: Connersville, Erlanger, Lebanon, Lebanon Junction, KY; Madison, IN; New Haven, KY; Richmond, IN; and Springfield, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; dismissal of petition for reconsideration.

**SUMMARY:** This document dismisses a Petition for Reconsideration Jointly filed by Newberry Broadcasting, Inc., Elizabethtown CBC, Inc., CBC of Marion County, Inc., and Cumulus Licensing, LLC directed to the *Report and Order* in this proceeding. With this action, the proceeding is terminated.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau, (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order* in MB Docket No. 05–17, adopted April 5, 2006, and released April 7, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was dismissed.)

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06–3935 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 06–795; MB Docket No. 05–274, RM–11274; MB Docket No. 05–275, RM–11275]**

### Radio Broadcasting Services; Coalgate, OK; and Silver Springs Shores, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots new channels to the communities of Coalgate, Oklahoma and Silver Springs Shores, Florida. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

**DATES:** Effective May 22, 2006. The window period for filing applications for these channels will not be opened at this time. Instead, the issue of opening filing windows for these allotments for auction will be addressed by the Commission in a subsequent order.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 05–274 and 05–275, adopted April 5, 2006, and released April 7, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the

Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Charles Crawford, allots Channel 242A at Coalgate, Oklahoma, as the community's second local commercial FM transmission service. *See* 70 FR 59292 (October 10, 2005). Channel 242A can be allotted to Coalgate in compliance with the Commission's minimum distance with a site restriction of 6.9 kilometers (4.3 miles) south of Coalgate. The coordinates for Channel 242A at Coalgate are 34–35–00 North Latitude and 96–10–00 West Longitude.

The Audio Division, at the request of Carrie Tutera Martin, allots Channel 259A at Silver Springs Shores, Florida, as the community's first local aural transmission service. *See* 70 FR 59292 (October 10, 2005). Channel 259A can be allotted to Silver Springs Shores in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) northwest of Silver Springs Shores, Florida. The coordinates for Channel 259A at Silver Springs Shores are 29–08–09 North Latitude and 82–02–33 West Longitude.

**List of Subjects in 47 CFR part 73**

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Silver Springs Shore, Channel 259A.

■ 3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 242A at Coalgate.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 06–3936 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No.051014263–6028–03; I.D. 041906A]**

## Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments; Pacific Halibut Fisheries

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

**ACTION:** Inseason adjustments to groundfish management measures; announcement of incidental halibut retention allowance; request for comments.

**SUMMARY:** NMFS announces changes to management measures in the commercial Pacific Coast groundfish fisheries. NMFS also announces regulations for the retention of Pacific halibut landed incidentally in the limited entry longline primary sablefish fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.). This document also contains notification of a voluntary closed area off Washington for salmon trollers. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) May 1, 2006. Comments on this rule will be accepted through May 26, 2006.

**ADDRESSES:** You may submit comments, identified by I.D. 041906A, by any of the following methods:

- E-mail: *GroundfishInseason8.nwr@noaa.gov*. Include I.D. number 041906A in the subject line of the message.
- Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE, Seattle, WA 98115–0070.
- Fax: 206–526–6736, Attn: Jamie Goen.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736; or e-mail: *jamie.goen@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the Pacific Fishery Management Council's (Pacific Council's) website at: *www.pcouncil.org*.

**Background**

The Pacific Coast Groundfish FMP and its implementing regulations at Title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Council, and are implemented by NMFS. The specifications and management measures for 2005–2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); August 22, 2005 (70 FR 48897); August 31, 2005 (70 FR 51682); October 5, 2005 (70 FR 58066); October 20, 2005 (70 FR 61063); October 24, 2005 (70 FR 61393); November 1, 2005 (70 FR 65861); and December 5, 2005 (70 FR 723850). Longer-term changes to the 2006 specifications and management measures were published in the **Federal Register** as a proposed rule on December 19, 2005 (70 FR 75115) and as a final rule on February 17, 2006 (71 FR 8489). The final rule was subsequently amended on March 27, 2006 (71 FR 10545) and April 11, 2006 (71 FR 18227).

The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k) (Halibut Act) and its implementing regulations at 50 CFR part 300, subpart E, regulate fishing for Pacific Halibut in U.S. Convention waters. The Halibut Act also authorizes the Pacific Council to develop regulations governing the Pacific halibut catch in waters off of Washington, Oregon, and California that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, the Pacific Council has developed, and NMFS has approved, a catch sharing plan (CSP) to allocate the

total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California). The CSP, as implemented at 50 CFR part 300, provides for retention of halibut landed incidentally in the limited entry, longline primary sablefish fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.) in years when the Area 2A TAC is above 900,000 lb (408.2 mt). Because the Area 2A TAC is above 900,000 lb (408.2 mt) in 2006, NMFS established an allowance for incidental halibut retention in the primary sablefish fishery in 2006 (71 FR 10850, March 3, 2006).

The changes to current groundfish management measures implemented by this action were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its April 2–7, 2006, meeting in Sacramento, CA. At that meeting, the Pacific Council recommended: (1) implementing a limited entry trawl small footrope trip limit for chilipepper rockfish south of 40°10′ N. lat. separate from the minor shelf rockfish, shortbelly, widow, and yelloweye rockfish small footrope trawl trip limit; (2) implementing the incidental catch allowance for halibut in the limited entry fixed gear primary sablefish fishery north of Pt. Chehalis, WA; (3) establishing a voluntary area closure of the Yelloweye Rockfish Conservation Area (YRCA) off Washington for salmon trollers; (4) increasing the weight allowance on the line for ''other flatfish'' caught with hook and line gear in the limited entry fixed gear and open access fisheries south of 42° N. lat.; and (5) reducing the two-month cumulative limit in the open access sablefish daily trip limit (DTL) fishery north of 36° N. lat. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

*Limited Entry Trawl Trip Limits for Chilipepper Rockfish South of 40°10′ N. Lat.*

Chilipepper rockfish is an abundant species that has been annually under harvested for the past five years in order to protect co-occurring overfished species, primarily bocaccio. The Pacific Council discussed increasing trip limits for chilipepper rockfish both shoreward and seaward of the RCAs south of 40°10′ N. lat. In 2005, the Pacific Council had considered raising the chilipepper rockfish limit for vessels using large footrope or midwater trawl gear in areas seaward of the RCAs to allow for targeted chilipepper rockfish fishing. However, because data were not available to fully analyze the impacts on co-occurring species, particularly bocaccio, a more conservative chilipepper rockfish limit was implemented for 2005–2006 than what was requested by industry members. A large footrope or midwater trawl trip limit of 12,000 lb (5,443 kg) per two months was adopted for May through August 2005, and a limit of 8,000 lb (3,629 kg) per two months was adopted for September to December 2005. These same limits are currently in place for 2006. In 2005, the Pacific Council did not recommend increasing the trip limit above 12,000 lb (5,443 kg) per two months. They decided to wait until West Coast Groundfish Observer Program (WCGOP) data on this southern trawl fishery were available and could be analyzed to better understand the impacts on co-occurring species. Currently, only WCGOP data through April 2005 are available. Because the higher trip limits for chilipepper rockfish did not start until May of 2005, WCGOP data on this fishery is unavailable. In addition, it is unknown at this time if WCGOP data were collected from vessels targeting chilipepper rockfish seaward of the RCAs in 2005. The Pacific Council's Groundfish Advisory Subpanel (GAP), representing industry members and the public, reported that the 12,000 lb (5,443 kg) per two months trip limit has resulted in only a few vessels targeting chilipepper rockfish seaward of the RCAs. Because WCGOP data is unavailable for this fishery at this time, the Pacific Council recommended at its April 2006 meeting that the chilipepper rockfish trip limit for large footrope or midwater trawl gear remain the same as in 2005.

To reduce discards of chilipepper rockfish in the small footrope trawl flatfish fisheries, which occurs primarily shoreward of the RCA, the Pacific Council's Groundfish Management Team (GMT) considered removing chilipepper rockfish from the overall 300 lb (136 kg) per month small footrope trip limit for minor shelf rockfish, chilipepper, shortbelly, widow and yelloweye rockfish both shoreward and seaward of the RCA and establishing a small footrope trip limit just for chilipepper rockfish. The GMT believed that a new chilipepper rockfish small footrope trip limit should be linked to a defined proportion of flatfish on board the vessel and in the landings to accommodate incidental catch occurring in the flatfish fishery. The GMT was concerned that allowing an amount greater than 1,000 lb (454 kg) per two months (or 500 lb (227 kg) per month) that was not linked to the flatfish fishery could result in targeted chilipepper rockfish fishing, with increased catches of overfished species that co-occur with chilipepper rockfish. WCGOP data from January 2004 to April 2005 were examined to identify chilipepper rockfish/flatfish catch ratios and bycatch correlations. After discussion of the WCGOP data and consideration of public comments, the Pacific Council recommended that NMFS adopt a small increase in chilipepper rockfish to accommodate incidental catch in the flatfish fishery while not creating an incentive for targeting of chilipepper rockfish.

Therefore, the Pacific Council recommended and NMFS is implementing a 500 lb (227 kg) per month small footrope trip limit for chilipepper rockfish that is separate from the minor shelf rockfish, shortbelly, widow and yelloweye rockfish limit of 300 lb (136 kg) per month from May through December.

*Retention of Incidental Halibut Catch in the Primary Sablefish Fishery North of Pt. Chehalis, WA*

The Pacific halibut CSP and implementing regulations at 50 CFR 300.63(b)(3) provide for retention of halibut landed incidentally in the limited entry, longline primary sablefish fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.) in years when the Area 2A TAC is above 900,000 lb (408.2 mt). The 2006 Area 2A TAC is 1,380,000 lb (626 mt).

According to IPHC and Federal regulations, Pacific halibut may not be taken by gear other than hook-and-line gear. Only vessels registered for use with sablefish-endorsed limited entry permits may participate in the primary fixed gear sablefish fishery specified for halibut retention in the CSP. Vessels must also carry IPHC commercial halibut licenses in order to retain and land halibut. Incidental halibut retention in the primary sablefish fishery is only allowed for vessels operating north of Pt. Chehalis, WA (46°53.30′ N. lat.). Under Pacific halibut regulations at 50 CFR 300.63, halibut taken and retained in the primary sablefish fishery may not be possessed or landed south of Pt. Chehalis, WA (46°53.30′ N. lat.).

Similar to 2005, halibut caught incidentally in the primary sablefish fishery may be retained by appropriately

licensed longline vessels. The amount of incidental halibut retained in the primary sablefish fishery continues to be capped at 70,000 lb (31,752 kg), to ensure that the fishery is maintained as an incidental and not as a directed fishery. The objective for setting annual landing restrictions is to reach the halibut quota for this fishery at about the same time as the primary sablefish season ends, October 31, and to ensure an equitable sharing of the halibut landings among the fishers. To achieve this objective, incidental halibut retention in the sablefish fishery over the past few years has been structured as a ratio of halibut landings permitted in relation to sablefish landings.

Therefore, the Pacific Council recommended, and NMFS is implementing the following: Beginning May 1, 2006, and continuing until the halibut quota 70,000 lb or (31,752 kg) is taken, longliners eligible to participate in the primary sablefish fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.) (see 50 CFR 660.372(a)) with appropriate IPHC licenses may retain incidental halibut landings up to 100 lb (45 kg) (dressed weight, head-on) of halibut for every 1,000 lb (454 kg) (dressed weight) of sablefish landed and up to two additional halibut in excess of the 100 lb (45 kg) per 1,000 lb (454 kg) ratio per landing. Halibut may not be on board a vessel that has any gear other than longline gear on board (e.g., pot or trawl gear).

*Voluntary ''C-shaped'' Closure off Washington for Salmon Troll Fisheries*

Since 2003, NMFS has implemented a ''C-shaped'' YRCA off the Washington coast to protect yelloweye rockfish, an overfished species (see 50 CFR 660.390(a)). For 2006, the ''C-shaped'' YRCA is a mandatory closed area for recreational groundfish and recreational Pacific halibut fishing. In addition, the ''C-shaped'' YRCA has been designated as an area to be avoided (a voluntary closure) by commercial fixed gear groundfish fishermen at §§ 660.382(c)(1) and 660.383(c)(1). Much of the YRCA is already closed to commercial groundfish fixed gear fishermen by the non-trawl RCA, which extends from the Washington shoreline to a line connecting specific latitude and longitude coordinates that approximates the 100–fm (183–m) depth contour.

To further protect yelloweye rockfish, the Pacific Council has recommended that the ''C-shaped'' YRCA in the North Coast subarea (Washington Marine Area 3) also be designated as an area to be avoided (a voluntary closure) by salmon trollers to protect yelloweye rockfish.

*Limited Entry Fixed Gear and Open Access Fisheries for ''Other Flatfish'' South of 42° N. Lat.*

For consistency with recreational regulations and to allow hook-and-line gear to more effectively fish on the bottom of the ocean for abundant flatfish species that do not usually co-occur with overfished groundfish species, the Pacific Council recommended revising the limited entry fixed gear and open access limits south of 42° N. lat. to allow vessels fishing for ''other flatfish'' with hook-and-line gear, with no more than 12 hooks per line, using hooks no larger than ''Number 2'' hooks, to use up to two one-pound weights rather than limiting them to one one-pound weight as in the trip limit tables, (Table 4 (South) and Table 5 (South)). In addition, the regulations at §§ 660.382 and 660.383 were inconsistent with the trip limit tables and are revised from reading ''up to two lb of weight per line'' to ''up to two one lb weights per line'' in order to be consistent with the inseason action recommended by the Pacific Council.

Therefore, NMFS is implementing gear restrictions for limited entry fixed gear and open access fisheries south of 42° N. lat. as follows: ''When fishing for ''other flatfish,'' vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than ''Number 2'' hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.''

*Open Access Sablefish Daily Trip Limit Fishery North of 36° N. Lat.*

The Pacific Council discussed reducing the sablefish daily trip limit (DTL) fishery's cumulative limit north of 36° N. lat. in anticipation of a large influx of fishing effort into the sablefish DTL fishery as a result of salmon fishery closures. The salmon fishery in 2006 is severely constrained off the coasts of Oregon and California. Fishery managers have received a number of inquiries from salmon fishers who are interested in moving into the open access sablefish DTL fishery. Only a minimal amount of hook-and-line or pot fishing gear is needed to participate in the sablefish DTL fishery, increasing the likelihood of fishers moving into this fishery. The amount of effort that may shift into the fishery as a result of lost salmon fishing opportunity, or for other reasons, is unknown and cannot be well estimated at this time. Under the current limits, a large increase in the number of open access sablefish DTL fishery participants could cause an early attainment of the open access sablefish allocation. If the allocation were reached, the fishery would need to be closed, possibly as early as July or August.

Though the open access sablefish DTL fishery could provide fishing opportunity for displaced salmon fishers, it would likely have a large effect on fishers who have historically participated in the sablefish fishery. Reducing the open access cumulative limit for sablefish on May 1, 2006, is predicted to result in a longer season, which would most benefit fishers who have historically participated in the year-round fishery.

The Pacific Council considered various reductions to the current open access sablefish DTL fishery's weekly and 2–month limits ranging from one landing per week of up to 500 lb (227 kg), not to exceed 2,000 lb (907 kg) per two months to status quo (one landing per week of up to 1,000 lb (454 kg), not to exceed 5,000 lb (2,268 kg) per two months). To sustain the open access sablefish DTL fishery until the end of year, the Pacific Council recommended that the daily and weekly trip limits for sablefish remain the same and that the cumulative limits for sablefish be reduced to 3,000 lb (1,361 kg) per two months. The Pacific Council will analyze effort shifts into the open access sablefish DTL fishery at their June 11–16, 2006, meeting when new data from the fishery are available.

Therefore, the Pacific Council recommended and NMFS is implementing a reduction in the open access cumulative trip limits for sablefish north of 36° N. lat. from ''300 lb (136 kg) per day, or one landing per week of up to 1,000 lb (454 kg), not to exceed 5,000 lb (2,268 kg) per two months'' to ''300 lb (136 kg) per day, or one landing per week of up to 1,000 lb (454 kg), not to exceed 3,000 lb (1,361 kg) per two months.''

## Classification

These actions are taken under the authority of 50 CFR 300.63(b)(3)and 660.370(c) and are exempt from review under Executive Order 12866.

These actions are authorized by the Pacific Coast groundfish FMP, the Halibut Act, and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment

would be impracticable and contrary to the public interest. The data upon which these recommendations were based was provided to the Pacific Council, and the Pacific Council made its recommendations at its April 2–7, 2006, meeting in Sacramento, CA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect at the start of the next cumulative limit period, May 1, 2006, as explained below. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable and contrary to the public interest because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect commercial groundfish fisheries. Changes to the limited entry trawl trip limits must be implemented in a timely manner by May 1, 2006, to reduce discard. Changes to the open access sablefish DTL fishery must be implemented in a timely manner by May 1, 2006, so that harvest of sablefish stays within the harvest levels projected for 2006 and is extended as long as possible over the year. Changes to the limited entry fixed gear primary sablefish fishery to allow the retention of Pacific halibut must be implemented by May 1, 2006, in order to provide an opportunity for participants in this fishery to catch the available quota projected to be taken based on the ratio of halibut to sablefish landings set. Changes to the limited entry fixed gear and open access gear requirements for ''other flatfish'' must be implemented as soon as possible and no later than May 1, 2006, in order to make commercial and recreational regulations consistent and to allow fishers better access to harvest of healthy stocks. Delaying any of these changes would keep management measures in place that are not based on the best available data and which could lead to early closures of the fishery if harvest of groundfish exceeds levels projected for 2006 or that deny fishermen access to available harvest. This would be contrary to the public interest because it would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

**List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, Fisheries, Fishing, Indians.

Dated: April 20, 2006.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, Natinal Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, and 16 U.S.C. 773–773k

■ 2. In § 660.372, paragraph (b)(3)(iv) is revised to read as follows:

### § 660.372 Fixed gear sablefish fishery management.

* * * * *

(b) * * *

(3) * * *

(iv) *Incidental halibut retention north of Pt. Chehalis, WA (46°53.30′ N. lat.).* From May 1 through October 31, vessels authorized to participate in the primary sablefish fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N. lat.) may land up to the following cumulative limits: 100 lb (45 kg) dressed weight, head-on of halibut per 1,000 lb (454 kg) dressed weight of sablefish, plus up to two additional halibut per fishing trip in excess of this ratio. ''Dressed'' halibut in this area means halibut landed eviscerated with their heads on. Halibut taken and retained in the primary sablefish fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 3. In § 660.382, paragraphs (c)(2) through (c)(5) are revised to read as follows:

### § 660.382 Limited entry fixed gear fishery management measures.

* * * * *

(c) * * *

(2) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. Fishing with limited entry fixed gear is prohibited within the CCAs, except that fishing for ''other flatfish'' is permitted within the CCAs using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two one lb (0.45 kg) weights per line. Fishing with limited entry fixed gear for rockfish and lingcod is permitted shoreward of the 20–fm (37–m) depth contour. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat.

(3) *Non-trawl Rockfish Conservation Areas.* Fishing for groundfish with non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, gillnet, set net, trammel net and spear) is prohibited within the non-trawl rockfish conservation area (RCA), except that commercial fishing for ''other flatfish'' is permitted within the non-trawl RCA off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two one lb (0.45 kg) weights per line. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear within the non-trawl RCA, unless otherwise authorized in this section. Limited entry fixed gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish that occurs within the non-trawl RCA may not retain any groundfish taken on that trip. If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.] Boundaries for the non-trawl RCA throughout the year are provided in the header to Table 4 (North) and Table 4 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-

trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided at §§ 660.390 through 660.394.

(4) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands, except that commercial fishing for ''other flatfish'' is permitted around the Farallon Islands using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two one lb (0.45 kg) weights per line. (See Table 4 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.390.

(5) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390, except that commercial fishing for ''other flatfish'' is permitted around Cordell Banks using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two one lb (0.45 kg) weights per line. [Note: California state regulations also prohibit fishing for all greenlings of the genus *Hexagrammos*, California sheephead and ocean whitefish in this area.]

* * * * *

■ 4. In § 660.383, paragraphs (c)(2), (c)(3), (c)(5), and (c)(6) are revised to read as follows:

**§ 660.383 Open access fishery management measures.**

* * * * *

(c) * * *

(2) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. Fishing with open access gear is prohibited within the CCAs, except that fishing for ''other flatfish'' is permitted within the CCAs using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1–lb (0.45–kg) weights per line. Fishing with open access gear, except trawl gear, for rockfish and lingcod is permitted shoreward of the 20–fm (37–m) depth contour. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat.

(3) *Non-trawl Rockfish Conservation Areas for the open access fisheries.* Fishing for groundfish with non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, gillnet, set net, trammel net and spear) is prohibited within the non-trawl rockfish conservation area (RCA), except that commercial fishing for ''other flatfish'' is permitted within the non-trawl RCA off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1–lb (0.45–kg) weights per line. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear within the non-trawl RCA, unless otherwise authorized in this section. Open access non-trawl gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish that occurs within the non-trawl RCA may not retain any groundfish taken on that trip. If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. Retention of groundfish caught by salmon troll gear is prohibited in the designated RCAs, except that salmon trollers may retain yellowtail rockfish caught both inside and outside the non-trawl RCA subject to the limits in Tables 5 (North) and 5 (South) of this subpart. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5(South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates which are specified at §§ 660.390 through 660.394.

* * * * *

(5) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands, except that commercial fishing for ''other flatfish'' is permitted around the Farallon Islands using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1–lb (0.45–kg) weights per line. (See Table 5 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.390.

(6) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390, except that commercial fishing for ''other flatfish'' is permitted around Cordell Banks using no more than 12 hooks, ''Number 2'' or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1–lb (0.45–kg) weights per line. [Note: California state regulations also prohibit fishing for all greenlings of the genus *Hexagrammos*, California sheephead and ocean whitefish in this area.]

* * * * *

■ 5. In part 660, subpart G, Table 3 (South), Table 4 (North and South), and Table 5 (North and South) are revised to read as follows:

BILLING CODE 3510–22–S

**Table 3 (South) to Part 660, Subpart G -- 2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table** 42006

| | JAN | FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[6/]:** | | | | | | | |
| 40°10' - 38° N. lat. | 75 fm - 150 fm | | 100 fm - 150 fm | | | | 75 fm - 150 fm |
| 38° - 34°27' N. lat. | 75 fm - 150 fm | | 100 fm - 150 fm | | | | 75 fm - 150 fm |
| South of 34°27' N. lat. | 75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | | | 75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands |
| Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA. | | | | | | | |
| **See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).** | | | | | | | |
| State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | | |
| 1 **Minor slope rockfish[2/] & Darkblotched rockfish** | | | | | | | |
| 2 40°10' - 38° N. lat. | 4,000 lb/ month | | 8,000 lb/ 2 months | | | | |
| 3 South of 38° N. lat. | 20,000 lb/ month | | 40,000 lb/ 2 months | | | | |
| 4 **Splitnose** | | | | | | | |
| 5 40°10' - 38° N. lat. | 4,000 lb/ month | | 8,000 lb/ 2 months | | | | |
| 6 South of 38° N. lat. | 20,000 lb/ month | | 40,000 lb/ 2 months | | | | |
| 7 **DTS complex** | | | | | | | |
| 8 Sablefish | 8,500 lb/ month | | 17,000 lb/ 2 months | | | | |
| 9 Longspine thornyhead | 9,500 lb / month | | 19,000 lb/ 2 months | | | | |
| 10 Shortspine thornyhead | 2,450 lb/ month | | 4,900 lb/ 2 months | | | | |
| 11 Dover sole | 25,000 lb/ month | | 50,000 lb/ 2 months | 35,000 lb/ 2 months | | | |
| 12 **Flatfish** (except Dover sole) | | | | | | | |
| 13 Other flatfish[3/] & English sole | | | | | | | |
| 14 40°10' - 38° N. lat. | 55,000 lb/ month | | Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | | | | 110,000 lb/ 2 months |
| 15 South of 38° N. lat. | | | | | | | |
| 16 Petrale sole | 30,000 lb/ month | | | | | | 60,000 lb/ 2 months |

TABLE 3 (South)

*Table 3 (South). Continued*

| | | | | | | |
|---|---|---|---|---|---|---|
| 17 | Arrowtooth flounder | | | | | |
| 18 | 40°10' - 38° N. lat. | 5,000 lb/ month | 10,000 lb/ 2 months | | | |
| 19 | South of 38° N. lat. | | | | | |
| 20 | **Whiting** | | | | | |
| 21 | midwater trawl | Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED | | | | |
| 22 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip - After the primary whiting season: 10,000 lb/trip | | | | |
| 23 | **Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish** | | | | | |
| 24 | large footrope or midwater trawl for Minor shelf rockfish & Shortbelly | 300 lb/ month | | | | |
| 25 | large footrope or midwater trawl for Chilipepper | 1,000 lb/ months | 2,000 lb/ 2 months | 12,000 lb/ 2 months | 8,000 lb/ 2 months | |
| 26 | large footrope or midwater trawl for Widow & Yelloweye | CLOSED | | | | |
| 27 | small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye | 300 lb/ month | | 300 lb/ month | | |
| 28 | small footrope trawl for Chilipepper | | | 500 lb/ month | | |
| 29 | **Bocaccio** | | | | | |
| 30 | large footrope or midwater trawl | 150 lb/ month | 300 lb/ 2 months | | | |
| 31 | small footrope trawl | CLOSED | | | | |
| 32 | **Canary rockfish** | | | | | |
| 33 | large footrope or midwater trawl | CLOSED | | | | |
| 34 | small footrope trawl | 100 lb/ month | | 300 lb/ month | 100 lb/ month | |
| 35 | **Cowcod** | CLOSED | | | | |
| 36 | **Minor nearshore rockfish & Black rockfish** | | | | | |
| 37 | large footrope or midwater trawl | CLOSED | | | | |
| 38 | small footrope trawl | 300 lb/ month | | | | |
| 39 | **Lingcod[4/]** | | | | | |
| 40 | large footrope or midwater trawl | 600 lb/ month | 1,200 lb/ 2 months | | | |
| 41 | small footrope trawl | | | | | |
| 42 | **Pacific cod** | Not limited | 30,000 lb/ 2 months | 70,000 lb/ 2 months | | 30,000 lb/ 2 months |
| 43 | **Spiny dogfish** | Not limited | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | |
| 44 | **Other Fish[5/] & Cabezon** | Not limited | | | | |

**TABLE 3 (South) con't**

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 4 (North) to Part 660, Subpart G -- 2006 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table** 42006

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| | North of 46°16' N. lat. | shoreline - 100 fm | | | | | |
| | 46°16' N. lat. - 40°10' N. lat. | 30 fm - 100 fm | | | | | |
| | **See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).** | | | | | | |
| | State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 1 | **Minor slope rockfish [2/] & Darkblotched rockfish** | 4,000 lb/ 2 months | | | | | |
| 2 | **Pacific ocean perch** | 1,800 lb/ 2 months | | | | | |
| 3 | **Sablefish** | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months | | | | | |
| 4 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 5 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | | | |
| 6 | **Dover sole** | 5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs. | | 5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | |
| 7 | **Arrowtooth flounder** | | | | | | |
| 8 | **Petrale sole** | | | | | | |
| 9 | **English sole** | | | | | | |
| 10 | **Other flatfish[1/]** | | | | | | |
| 11 | **Whiting** | 10,000 lb/ trip | | | | | |
| 12 | **Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 13 | **Canary rockfish** | CLOSED | | | | | |
| 14 | **Yelloweye rockfish** | CLOSED | | | | | |
| 15 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 16 | North of 42° N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/] | | | | | |
| 17 | 42° - 40°10' N. lat. | 6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/] | | | | | |
| 18 | **Lingcod[4/]** | CLOSED | | 800 lb/ 2 months | | | CLOSED |
| 19 | **Pacific cod** | Not limited | 1,000 lb/ 2 months | | | | |
| 20 | **Spiny dogfish** | Not limited | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 21 | **Other fish[5/]** | Not limited | | | | | |

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

**Table 4 (South) to Part 660, Subpart G -- 2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table** 42006

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** 40°10' - 34°27' N. lat. | 30 fm - 150 fm | | 20 fm - 150 fm | | 30 fm - 150 fm | |
| | South of 34°27' N. lat. | 60 fm - 150 fm (also applies around islands) | | | | | |
| | **See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).** | | | | | | |
| | State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 1 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 40,000 lb/ 2 months | | | | | |
| 2 | **Splitnose** | 40,000 lb/ 2 months | | | | | |
| 3 | **Sablefish** | | | | | | |
| 4 | 40°10' - 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months | | | | | |
| 5 | South of 36° N. lat. | 350 lb/ day, or 1 landing per week of up to 1,050 lb | | | | | |
| 6 | **Longspine thornyhead** | 10,000 lb / 2 months | | | | | |
| 7 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | | | |
| 8 | **Dover sole** | 5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs. | | 5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | |
| 9 | **Arrowtooth flounder** | | | | | | |
| 10 | **Petrale sole** | | | | | | |
| 11 | **English sole** | | | | | | |
| 12 | **Other flatfish[1/]** | | | | | | |
| 13 | **Whiting** | 10,000 lb/ trip | | | | | |
| 14 | **Minor shelf rockfish[2/], Shortbelly, & Widow rockfish** | | | | | | |
| 15 | 40°10' - 34°27' N. lat. | 300 lb/ 2 months | CLOSED | 200 lb/ 2 months | | 300 lb/ 2 months | |
| 16 | South of 34°27' N. lat. | 3,000 lb/ 2 months | | | | | |
| 17 | **Chilipepper rockfish** | 2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA | | | | | |
| 18 | **Canary rockfish** | CLOSED | | | | | |
| 19 | **Yelloweye rockfish** | CLOSED | | | | | |
| 20 | **Cowcod** | CLOSED | | | | | |
| 21 | **Bocaccio** | | | | | | |
| 22 | 40°10' - 34°27' N. lat. | 200 lb/ 2 months | CLOSED | 100 lb/ 2 months | 300 lb/ 2 months | | |
| 23 | South of 34°27' N. lat. | 300 lb/ 2 months | | 300 lb/ 2 months | | | |
| 24 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 25 | Shallow nearshore | 300 lb/ 2 months | CLOSED | 500 lb/ 2 months | 600 lb/ 2 months | 500 lb/ 2 months | 300 lb/ 2 months |
| 26 | Deeper nearshore | | | | | | |
| 27 | 40°10' - 34°27' N. lat. | 500 lb/ 2 months | CLOSED | 500 lb/ 2 months | | 400 lb/ 2 months | 500 lb/ 2 months |
| 28 | South of 34°27' N. lat. | | | 600 lb/ 2 months | | | 400 lb/ 2 months |
| 29 | California scorpionfish | 300 lb/ 2 months | CLOSED | 300 lb/ 2 months | 400 lb/ 2 months | | 300 lb/ 2 months |
| 30 | **Lingcod[3/]** | CLOSED | | 800 lb/ 2 months | | | CLOSED |
| 31 | **Pacific cod** | Not limited | 1,000 lb/ 2 months | | | | |
| 32 | **Spiny dogfish** | Not limited | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 33 | **Other fish[4/] & Cabezon** | Not limited | | | | | |

TABLE 4 (South)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 5 (North) to Part 660, Subpart G -- 2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table**

42006

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| | North of 46°16' N. lat. | shoreline - 100 fm | | | | | |
| | 46°16' N. lat. - 40°10' N. lat. | 30 fm - 100 fm | | | | | |
| | **See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).** | | | | | | |
| | State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 1 | **Minor slope rockfish[1/] & Darkblotched rockfish** | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 2 | **Pacific ocean perch** | 100 lb/ month | | | | | |
| 3 | **Sablefish** | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months | | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months | | | |
| 4 | **Thornyheads** | CLOSED | | | | | |
| 5 | **Dover sole** | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weights per line are not subject to the RCAs. | | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | |
| 6 | **Arrowtooth flounder** | | | | | | |
| 7 | **Petrale sole** | | | | | | |
| 8 | **English sole** | | | | | | |
| 9 | **Other flatfish[2/]** | | | | | | |
| 10 | **Whiting** | 300 lb/ month | | | | | |
| 11 | **Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 12 | **Canary rockfish** | CLOSED | | | | | |
| 13 | **Yelloweye rockfish** | CLOSED | | | | | |
| 14 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 15 | North of 42° N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/] | | | | | |
| 16 | 42° - 40°10' N. lat. | 6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/] | | | | | |
| 17 | **Lingcod[4/]** | CLOSED | | 300 lb/ month | | | CLOSED |
| 18 | **Pacific cod** | Not limited | 1,000 lb/ 2 months | | | | |
| 19 | **Spiny dogfish** | Not limited | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 20 | **Other Fish[5/]** | Not limited | | | | | |
| 21 | **PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)* | | | | | | |
| 22 | North | **Effective April 1 - October 31:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |
| 23 | **SALMON TROLL** | | | | | | |
| 24 | North | Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above. | | | | | |

TABLE 5 (North)

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish.
Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 5 (South) to Part 660, Subpart G -- 2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table** 42006

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** 40°10' - 34°27' N. lat. | 30 fm - 150 fm | | 20 fm - 150 fm | | 30 fm - 150 fm | |
| | South of 34°27' N. lat. | 60 fm - 150 fm (also applies around islands) | | | | | |
| | **See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).** | | | | | | |
| | State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 1 | **Minor slope rockfish[1/] & Darkblotched rockfish** | | | | | | |
| 2 | 40°10' - 38° N. lat. | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 3 | South of 38° N. lat. | 10,000 lb/ 2 months | | | | | |
| 4 | **Splitnose** | 200 lb/ month | | | | | |
| 5 | **Sablefish** | | | | | | |
| 6 | 40°10' - 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months | | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months | | | |
| 7 | South of 36° N. lat. | 350 lb/ day, or 1 landing per week of up to 1,050 lb | | | | | |
| 8 | **Thornyheads** | | | | | | |
| 9 | 40°10' - 34°27' N. lat. | CLOSED | | | | | |
| 10 | South of 34°27' N. lat. | 50 lb/ day, no more than 1,000 lb/ 2 months | | | | | |
| 11 | **Dover sole** | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs. | | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | |
| 12 | **Arrowtooth flounder** | | | | | | |
| 13 | **Petrale sole** | | | | | | |
| 14 | **English sole** | | | | | | |
| 15 | **Other flatfish[2/]** | | | | | | |
| 16 | **Whiting** | 300 lb/ month | | | | | |
| 17 | **Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish** | | | | | | |
| 18 | 40°10' - 34°27' N. lat. | 300 lb/ 2 months | CLOSED | 200 lb/ 2 months | | 300 lb/ 2 months | |
| 19 | South of 34°27' N. lat. | 750 lb/ 2 months | | | | | |
| 20 | **Canary rockfish** | CLOSED | | | | | |
| 21 | **Yelloweye rockfish** | CLOSED | | | | | |
| 22 | **Cowcod** | CLOSED | | | | | |
| 23 | **Bocaccio** | | | | | | |
| 24 | 40°10' - 34°27' N. lat. | 200 lb/ 2 months | CLOSED | 100 lb/ 2 months | | 200 lb/ 2 months | |
| 25 | South of 34°27' N. lat. | 100 lb/ 2 months | | 100 lb/ 2 months | | | |

TABLE 5 (South)

*Table 5 (South). Continued*

**TABLE 5 (South) con't**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 26 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 27 | Shallow nearshore | 300 lb/ 2 months | CLOSED | 500 lb/ 2 months | 600 lb/ 2 months | 500 lb/ 2 months | 300 lb/ 2 months |
| 28 | Deeper nearshore | | | | | | |
| 29 | 40°10' - 34°27' N. lat. | 500 lb/ 2 months | CLOSED | 500 lb/ 2 months | | 400 lb/ 2 months | 500 lb/ 2 months |
| 30 | South of 34°27' N. lat. | | | 600 lb/ 2 months | | | 400 lb/ 2 months |
| 31 | California scorpionfish | 300 lb/ 2 months | CLOSED | 300 lb/ 2 months | 400 lb/ 2 months | | 300 lb/ 2 months |
| 32 | **Lingcod**[3/] | CLOSED | | 300 lb/ month, when nearshore open | | | CLOSED |
| 33 | **Pacific cod** | Not limited | 1,000 lb/ 2 months | | | | |
| 34 | **Spiny dogfish** | Not limited | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 35 | **Other Fish**[4/] **& Cabezon** | Not limited | | | | | |
| 36 | **RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL** | | | | | | |
| 37 | **NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:** | | | | | | |
| 38 | 40°10' - 38° N. lat. | 75 fm - modified 200 fm [7/] | 100 fm - 200 fm | 100 fm - 150 fm | | | 75 fm - 150 fm |
| 39 | 38° - 34°27' N. lat. | 75 fm - 150 fm | 100 fm - 150 fm | | | | |
| 40 | South of 34°27' N. lat. | 75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | | | 75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands |
| 41 | **NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:** | | | | | | |
| 42 | 40°10' - 38° N. lat. | 75 fm - modified 200 fm [7/] | 100 fm - 200 fm | 100 fm - 150 fm | | | 75 fm - 150 fm |
| 43 | 38° - 34°27' N. lat. | 75 fm - 150 fm | 100 fm - 150 fm | | | | |
| 44 | South of 34°27' N. lat. | 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | | | | |
| 45 | | Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31). | | | | | |
| 46 | **PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)* | | | | | | |
| 47 | South | **Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

[FR Doc. 06–3942 Filed 4–25–06; 8:45 am]
BILLING CODE 3510–22–C

# Proposed Rules

Federal Register
Vol. 71, No. 80
Wednesday, April 26, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 652 and 655

**RIN 3052–AC17**

### Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Federal Agricultural Mortgage Corporation Disclosure and Reporting Requirements; Risk-Based Capital Requirements

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** The Farm Credit Administration (FCA) is reopening the comment period on the proposed rule that would revise risk-based capital requirements for the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) so that interested parties will have additional time to provide comments.

**DATES:** Please send your comments to us on or before May 17, 2006.

**ADDRESSES:** You may mail or deliver comments to Robert Coleman, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or send them by facsimile transmission to (703) 883–4477. You may also submit your comments by electronic mail to *reg-comm@fca.gov*, or through the Pending Regulations section of our Web site at *http://www.fca.gov*, or through the Government-wide Web site *http://www.regulations.gov*. You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at ''*http://www.fca.gov*.'' Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:** Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434; or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**SUPPLEMENTARY INFORMATION:** On November 17, 2005, FCA published a proposed rule in the **Federal Register** to amend regulations in parts 652 and 655 that establish a risk-based capital stress test for the Corporation as required by section 8.32 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2279bb–1). *See* 70 FR 69692, November 17, 2005. The 90-day comment period on the proposed rule was scheduled to expire on February 15, 2006, but was extended for 60 days to April 17, 2006, in a **Federal Register** notice published on February 13, 2006, in response to a request for additional time. *See* 71 FR 7446, February 13, 2006. The FCA has now received requests from both a commercial bank and several Farm Credit System institutions to delay action on the rule until they have had sufficient time to prepare comments. These parties indicate additional time is needed to respond to this highly technical and complex proposed rule.

In response to these requests, we are reopening the comment period until May 17, 2006. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide their comments on the proposed rule. The FCA does not anticipate any further extensions to the comment period.

Dated: April 20, 2006.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E6–6294 Filed 4–25–06; 8:45 am]

**BILLING CODE 6705–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–23742; Directorate Identifier 2005–NE–53–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Pratt & Whitney JT9D–7R4G2 Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–7R4G2 turbofan engines. This proposed AD would require replacing the old configuration 2nd stage high pressure turbine (HPT) air seal assembly with a new design 2nd stage HPT air seal assembly that increases cooling air flow. This proposed AD results from a report of an uncontained failure of the 2nd stage air seal assembly, caused by the air seal assembly brace disengaging from the air seal, due to insufficient cooling air flow. We are proposing this AD to prevent uncontained failure of the 2nd stage HPT air seal assembly, leading to engine in-flight shutdown and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by June 26, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7743, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–23742; Directorate Identifier 2005–NE–53–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DOT Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

## Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DOT Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

## Discussion

We have received two reports of failure of the 2nd stage HPT air seal assembly, part number (P/N) 815097, installed in JT9D–7R4G2 turbofan engines. One of those failures was uncontained. We have also received reports of damage found during HPT module disassembly, such as cracked knife-edge seals, cracked antirotation slots, and brace gaps over limits, on 2nd stage HPT air seal assemblies.

The old configuration 2nd stage HPT air seal assembly has a brace that can disengage and move radially, causing excessive rubbing of the air seal's knife edge against the static honeycomb seal. This rubbing leads to local excessive temperatures, cracks, thinning of the barrel of the 2nd stage HPT air seal assembly, and separation of material. The brace disengages from the air seal due to excessive buckling stress in the brace. The buckling stress is caused by the thermal interaction of the 2nd stage HPT air seal assembly and its constraining rotors. This thermal interaction causes higher-than-predicted temperatures leading to the brace disengaging. This condition, if not corrected, could result in uncontained failure of the 2nd stage HPT air seal assembly, leading to engine in-flight shutdown and damage to the airplane.

## Relevant Service Information

We have reviewed and approved the technical contents of PW Alert Service Bulletin JT9D–7R4–A72–596, dated September 15, 2005. That Alert Service Bulletin describes procedures for replacing 2nd stage HPT air seal assembly, P/N 815097, with a new configuration 2nd stage HPT air seal assembly that increases cooling air flow, either by installing a new 2nd stage air seal assembly or modifying the old configuration 2nd stage HPT seal assembly.

## FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require at the next HPT module overhaul, replacing the 2nd stage HPT air seal assembly, P/N 815097, with a new configuration 2nd stage HPT air seal assembly that increases cooling air flow, either by installing a new 2nd stage air seal assembly or modifying the old configuration 2nd stage seal assembly. The proposed AD would require you to use the service information described previously to perform these actions.

## Costs of Compliance

We estimate that this proposed AD would affect 176 PW JT9D–7R4G2 turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 64 workhours per engine to perform the proposed actions, and that the average labor rate is $80 per workhour. Required parts would cost about $5,400 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,851,520.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES**

section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Pratt & Whitney:** Docket No. FAA–2006–23742; Directorate Identifier 2005–NE–53–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 26, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Pratt & Whitney (PW) JT9D–7R4G2 turbofan engines. These engines are installed on, but not limited to, Boeing 747–200B, –200C, –200F, and –300 airplanes.

**Unsafe Condition**

(d) This AD results from a report of an uncontained failure of the 2nd stage air seal assembly, caused by the air seal assembly brace disengaging from the air seal, due to insufficient cooling air flow. We are issuing this AD to prevent uncontained failure of the 2nd stage high pressure turbine (HPT) air seal assembly, leading to engine in-flight shutdown and damage to the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed at the next HPT module exposure after the effective date of this AD, unless the actions have already been done.

(f) Replace the 2nd stage HPT air seal assembly, part number 815097, with a new configuration 2nd stage HPT air seal assembly that increases cooling air flow, either by installing a new 2nd stage air seal assembly, or modifying the old configuration 2nd stage HPT seal assembly.

(g) Use the Accomplishment Instructions of PW Alert Service Bulletin JT9D–7R4–A72–596, dated September 15, 2005, to do the replacement.

**Definition**

(h) For the purposes of this AD, an HPT module exposure is when the 1st stage HPT rotor and 2nd stage HPT rotor are removed from the HPT case, making the 2nd stage HPT vanes and 2nd stage HPT air seal assembly accessible in the HPT case.

**Alternative Methods of Compliance**

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

**Related Information**

(j) None.

Issued in Burlington, Massachusetts, on April 19, 2006.

**Thomas A. Boudreau,**

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

[FR Doc. 06–3922 Filed 4–25–06; 8:45 am]

BILLING CODE 4910–13–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2005–0459; FRL–7771–9]**

## Endosulfan, Fenarimol, Imazalil, Oryzalin, Sodium Acifluorfen, Trifluralin, and Ziram; Proposed Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke certain tolerances for the insecticide endosulfan, the fungicides fenarimol, imazalil, and ziram; and the herbicide trifluralin. Also, EPA is proposing to modify certain tolerances for the insecticide endosulfan, the fungicides fenarimol, imazalil, and ziram; and the herbicides sodium acifluorfen and trifluralin. In addition, EPA is proposing to establish new tolerances for the insecticide endosulfan, the fungicides fenarimol, imazalil, and ziram; and the herbicides oryzalin and trifluralin. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. No tolerance reassessments will be counted at the time of a final rule because tolerances in existence on August 2, 1996, that are associated with actions proposed herein were previously counted as reassessed at the time of the completed Reregistration Eligibility Decision (RED), Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED), or **Federal Register** action.

**DATES:** Comments must be received on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0459, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2005–0459. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Kendra Tyler, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0125; e-mail address:*tyler.kendra@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

### *C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

### *A. What Action is the Agency Taking?*

EPA is proposing to revoke, remove, modify, and establish specific tolerances for residues of the insecticide endosulfan, the fungicides fenarimol, imazalil, and ziram; and the herbicides oryzalin, sodium acifluorfen, and trifluralin in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each

Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the internet for endosulfan, fenarimol, imazalil, oryzalin, sodium acifluorfen, trifluralin, and ziram in public dockets EPA–HQ–OPP–2002–0262, EPA–HQ–OPP–2002–0250, EPA–HQ–OPP–2002–0217, EPA–HQ–OPP–2003–0369, EPA–HQ–OPP–2003–0293, EPA–HQ–OPP–2004–0142, and EPA–HQ–OPP–2004–0194, respectively, at *http://www.regulations.gov*.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that: (1) Lawful use (sometimes through a label change) may result in a higher residue level on the commodity and (2) the tolerance remains safe, notwithstanding increased residue level allowed under the tolerance. In REDs, Chapter IV on ''Risk management, Reregistration, and Tolerance Reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and paper copies for endosulfan, fenarimol, imazalil, oryzalin, sodium acifluorfen, and trifluralin can be found under their respective public docket numbers, identified above. Paper copies for ziram and imazalil are available in the public docket for this proposed rule. Electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at*http://www.regulations.gov*. You may search for this proposed rule under docket number EPA–HQ–OPP–2005–0459, or for an individual chemical under its respective docket number, then click on that docket number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above-mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe, i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION.**

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is proposing to revoke specific tolerances for combined imazalil residues of concern on the fat, liver, meat, and meat byproducts of hogs because the Agency has concluded that there is no reasonable expectation of finite residues in or on the commodities associated with the tolerances, and therefore these tolerances are no longer needed.

The determinations that there are no reasonable expectations of finite imazalil residues of concern on the fat, liver, meat, and meat byproducts of hogs were made based on the Agency's conclusion that there are no current imazalil commodity uses which are significant feed items for hogs. (While there is an imazalil tolerance for citrus dried pulp, the Agency does not consider it to be a significant feed item for hogs). Because EPA determined that there is no reasonable expectation of finite residues, under 40 CFR 180.6 the imazalil tolerances for hog, fat; hog, liver; hog, meat; and hog, meat byproducts are no longer needed under the FFDCA and can be proposed for revocation.

1. *Endosulfan.* Currently, the tolerance expression for residues is defined in terms of endosulfan and its metabolite endosulfan sulfate in 40 CFR 180.182. Because the tolerance expression should reflect the alpha- and beta-isomers of the parent compound, EPA is proposing to modify the tolerance expression in 40 CFR 180.182 in order to specify the alpha- and beta-isomers of the parent. Also, EPA is proposing to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice (''N'' designation means negligible residues).

Because no active registrations exist for use of endosulfan on globe artichokes, sugar beets, raspberries, safflower seeds, and sunflower seeds, the tolerances are no longer needed. Therefore, EPA is proposing in 40 CFR 180.182(a)(1) to revoke the tolerances for ''artichoke, globe''; ''beet, sugar, roots''; ''raspberry''; ''safflower, seed''; and ''sunflower, seed.''

Based on available data on almond that show combined endosulfan residues of concern are non-detectable in or on almond kernels, the Agency has determined that the tolerance on almond should be increased to 0.3 ppm, the combined limits of detection. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of

concern in or on ''almond'' from 0.2 to 0.3 ppm.

Based on available data on the grain and straw of barley and wheat that show combined endosulfan residues of concern as high as 0.30, 0.30, 0.35, and 0.38 ppm in/on barley grain, wheat grain, barley straw, and wheat straw, respectively, the Agency has determined that the tolerances on barley and wheat grain should be increased to 0.3 ppm and tolerances on barley and wheat straw should be increased to 0.4 ppm. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''barley, grain'' and ''wheat, grain'' from 0.1 to 0.3 ppm, and ''barley, straw'' and ''wheat, straw'' from 0.2 to 0.4 ppm.

Based on available data on blueberry that show combined endosulfan residues of concern are non-detectable (<0.1 ppm), the Agency has determined that the tolerance on blueberry should be increased to 0.3 ppm, the combined limits of detection. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''blueberry'' from 0.1 to 0.3 ppm.

Based on available data on broccoli that show combined endosulfan residues of concern as high as 2.41 ppm, the Agency has determined that the tolerance on broccoli should be increased to 3.0 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''broccoli'' from 2.0 to 3.0 ppm.

Based on available data that show combined endosulfan residues of concern as high as 3.1 ppm on cabbage with wrapper leaves, the Agency has determined that the tolerance on cabbage should be increased to 4.0 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''cabbage'' from 2.0 to 4.0 ppm.

Based on available data on celery that show combined endosulfan residues of concern as high as 7.0 ppm, the Agency has determined that the tolerance on celery should be increased to 8.0 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''celery'' from 2.0 to 8.0 ppm.

Based on available data that show combined endosulfan residues of concern as high as 10.11 ppm in or on head lettuce with wrapper leaves and 5.72 ppm in or on leaf lettuce, the Agency has determined that the existing tolerance on lettuce should be split into separate tolerances for head lettuce and leaf lettuce, and increased to 11.0 ppm and 6.0 ppm, respectively. Therefore, EPA is proposing to split the tolerance in 40 CFR 180.182(a)(1) on lettuce into ''lettuce, head'' and ''lettuce, leaf'' and increase them for combined endosulfan residues of concern from 2.0 to 11.0 and 6.0 ppm, respectively.

Based on available data on oat grain, oat straw, rye grain, and rye straw that show combined endosulfan residues of concern as high as 0.30, 0.32, 0.30, and 0.30 ppm, respectively, the Agency has determined that the tolerances on oat grain, oat straw, rye grain, and rye straw should be increased to 0.3, 0.4, 0.3, and 0.3 ppm, respectively. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''oat, grain'' from 0.1 to 0.3 ppm; ''oat, straw'' from 0.2 to 0.4 ppm; ''rye, grain'' from 0.1 to 0.3 ppm; and rye, straw from 0.2 to 0.3 ppm.

Available ruminant metabolism data indicate that combined endosulfan residues of concern at 1.1x and 1.7x the maximum dietary burden for beef and dairy cattle, respectively were 0.78 ppm in milk, 12 ppm in fat, 0.85 ppm in kidney, 4.6 ppm in liver, and 2.0 ppm in muscle. The Agency determined that separate tolerances for liver should be established and that the tolerances for meat byproducts should be revised to meat byproducts, except liver and the appropriate tolerances for fat, meat byproducts (except liver), liver, and meat of cattle, goats, hogs, horses, and sheep should be increased to 13.0, 1.0, 5.0, and 2.0 ppm, respectively. Also, the Agency determined that the tolerance for milk fat should be increased to 2.0 ppm. Therefore, EPA is proposing to increase the commodity tolerances in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''cattle, fat''; ''goat, fat''; ''hog, fat''; ''horse, fat''; and ''sheep, fat'' from 0.2 to 13.0 ppm; ''cattle, meat byproducts, except liver''; ''goat, meat byproducts, except liver''; ''hog, meat byproducts, except liver''; ''horse, meat byproducts, except liver''; and ''sheep, meat byproducts, except liver'' from 0.2 to 1.0 ppm; ''cattle, meat''; ''goat, meat''; ''hog, meat''; ''horse, meat''; and ''sheep, meat'' from 0.2 to 2.0 ppm; ''milk, fat (=N in whole milk)'' from 0.5 to 2.0 ppm; and establish tolerances at 5.0 ppm for ''cattle, liver''; ''goat, liver''; ''hog, liver''; ''horse, liver''; and ''sheep, liver.''

Based on available data on cantaloupes, cucumbers, and summer squash that show combined endosulfan residues of concern as high as 0.76, 0.66, and 0.25 ppm, respectively, the Agency has determined that the tolerances on melon, cucumber, and summer squash should be decreased to 1.0 ppm. Also, the available data for melon, cucumber, and summer squash may be translated to pumpkin and winter squash. Therefore, EPA is proposing to combine the individual tolerances in 40 CFR 180.182(a)(1) on cucumber, melon, pumpkin, squash, summer; and squash, winter into ''vegetable, cucurbit, group 9'' and decrease the tolerance for combined endosulfan residues of concern from 2.0 to 1.0 ppm.

Based on available data on tomato that show combined endosulfan residues of concern as high as 0.97 ppm, respectively, the Agency has determined that the tolerance on tomato should be decreased to 1.0 ppm. Also, the available data for tomato may be translated to eggplant. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''eggplant'' from 2.0 to 1.0 ppm and ''tomato'' from 2.0 to 1.0 ppm.

Based on available data on sweet potatoes that show combined endosulfan residues of concern are non-detectable (each <0.05 ppm), the Agency has determined that the tolerance on sweet potato should be decreased to 0.15 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''sweet potato, roots'' from 0.2 to 0.15 ppm.

Based on available data on apple that show combined endosulfan residues of concern as high as 0.84 ppm, the Agency has determined that the tolerance on apple should be decreased to 1.0 ppm. This level is also compatible with CODEX Alimentarius Commission Maximum Residue Limits (MRLs) for endosulfan residues on pome fruits. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''apple'' from 2.0 to 1.0 ppm.

Apple processing data indicate that combined endosulfan residues of concern concentrate by 6x in wet apple pomace. Based on HAFT combined residues of 0.77 ppm in/on apples, combined residues as high as 4.62 ppm would be expected. Therefore, EPA is proposing in 40 CFR 180.182(a)(1) to establish a tolerance for combined endosulfan residues of concern in or on ''apple, wet pomace'' at 5.0 ppm.

Based on available data on pineapple that show combined endosulfan residues of concern as high as 0.5 ppm, the Agency has determined that the tolerance on pineapple should be

decreased to 1.0 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''pineapple'' from 2.0 to 1.0 ppm.

Based on processing data that indicate combined endosulfan residues of concern concentrate 7x in peel and 41x in bran processed from whole pineapple and a HAFT combined residues of 0.44 ppm for in/on pineapple, residues as high as 18.04 ppm would be expected and the Agency determined that a tolerance for pineapple process residue (also known as wet bran) should be established at 20.0 ppm. Although, the RED and Residue Chemistry Chapters have tables which inadvertently are listed as 18 ppm; the text within the RED and Residue Chemistry Chapter both state that 20.0 ppm is appropriate. Therefore, EPA is proposing in 40 CFR 180.182(a)(1) to establish a tolerance for combined endosulfan residues of concern in or on ''pineapple, process residue'' at 20.0 ppm.

Based on available data on sweet corn that show combined endosulfan residues of concern as high as 12.0 ppm in or on sweet corn forage and 13.92 ppm in or on sweet corn stover, the Agency has determined that tolerances should be established at 12.0 and 14.0 ppm, respectively. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''corn, sweet, forage'' at 12.0 ppm and ''corn, sweet, stover'' at 14.0 ppm.

Based on available data on cotton gin byproducts that show combined endosulfan residues of concern as high as 27.5 ppm, the Agency has determined that a tolerance on cotton gin byproducts should be established at 30.0 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''cotton, gin byproducts'' at 30.0 ppm.

Based on the translation of data from carrot and potato, the Agency determined that a tolerance should be established for turnip roots at 0.2 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.182(a)(1) for combined endosulfan residues of concern in or on ''turnip, roots'' at 0.2 ppm.

EPA is proposing to revise commodity terminology in 40 CFR 180.182 to conform to current Agency practice as follows: ''Cherry'' to ''cherry, sweet'' and ''cherry, sour''; ''pecans'' to ''pecan''; and ''turnip, greens'' to ''turnip, tops.''

2. *Fenarimol*. Because dry apple pomace, grape pomace (wet and dry), and raisin waste are no longer considered to be significant livestock feed items, the tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.421(a)(1) for residues of the fungicide fenarimol in or on ''apple, dry pomace''; and in 40 CFR 180.421(a)(2) for residues of the fungicide fenarimol and its metabolites in or on ''grape pomace (wet and dry)'' and ''grape, raisin, waste.''

Based on available grape processing data, the Agency determined that combined residues of fenarimol and its metabolites marginally concentrated in juice and raisins. However, calculations using the anticipated residue for grape with the processing factors, show that the anticipated combined residues for the grape processed commodities (juice and raisin) are each less than the reassessed tolerance for grape (0.1 ppm). The tolerances for grape juice at 0.6 ppm and raisins at 0.6 ppm are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.421(a)(2) for residues of the fungicide fenarimol and its metabolites in or on ''grape, juice'' and ''grape, raisin.''

The Agency extrapolated data from a 28–day ruminant feeding study of exaggerated dietary burdens to the 1x feeding rate, and examined the expected impact of the average theoretical dietary burden from wet apple pomace (calculated using Food and Drug Administration monitoring data for apples). Of the currently registered uses of fenarimol, wet apple pomace is the only commodity considered a livestock feed item. For cattle, goats, horses, and sheep, the Agency concluded from monitoring, feeding, and metabolism data that expected fenarimol residues in muscle, fat, and kidney are calculated to be less than or near the enforcement method's limit of detection (0.003 ppm). Therefore, the Agency determined that for muscle, fat, and kidney of ruminants it is not possible to establish with certainty whether finite residues will be incurred, but there is a reasonable expectation of finite residues under 40 CFR 180.6(a)(2). For cattle, goats, horses, and sheep, EPA reassessed meat, kidney, and fat tolerances at 0.01 ppm, the method limit of quantitation. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.421(a)(1) for residues of the fungicide fenarimol in or on ''cattle, fat''; ''cattle, kidney''; ''goat, fat''; ''goat, kidney''; ''horse, fat''; ''horse, kidney''; ''sheep, fat''; and ''sheep, kidney''; each from 0.1 to 0.01 ppm, and to maintain the tolerances at 0.01 ppm for ''cattle, meat''; ''goat, meat''; ''horse, meat''; and ''sheep, meat.''

Based on field trial data that show residues of fenarimol *per se* were non-detectable (less than 0.002 ppm, the method limit of detection) in pecan nut leat samples from six trials and in one trial were detected at 0.02 ppm, the Agency determined that the tolerance should be decreased from 0.1 to 0.02 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.421(a)(1) for residues of fenarimol in or on ''pecan'' from 0.1 to 0.02 ppm.

Food and Drug Administration (FDA) monitoring data for apples during the period 1996–1999 showed nondetectable (less than 0.003 ppm, the method limit of detection) residues of fenarimol per se on apples. Based on the highest average field trial (HAFT) residue of 0.059 ppm for apples and a concentration factor of 3.7-fold for wet pomace, the maximum expected residue in wet pomace is 0.22 ppm and the Agency determined that a tolerance of 0.3 ppm on wet apple pomace is appropriate. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.421(a)(1) for residues of fenarimol in or on ''apple, wet pomace'' from 2.0 to 0.3 ppm.

Food and Drug Administration (FDA) monitoring data for grapes during the period 1996–1999 showed nondetectable (less than 0.003 ppm, the method limit of detection) residues of fenarimol per se on grapes. Based on field trial data that indicate residues as high as 0.042 ppm for fenarimol and 0.073 for its metabolites in or on grapes harvested after 30 days following the last of four applications, the Agency determined that a tolerance of 0.1 ppm on grapes is appropriate. However, since the August 2002 fenarimol TRED, the registrant Gowan Company has requested that the Agency shorten the pre-harvest interval (PHI) from 30 days to 21 days on grapes. Based on the grape residue data submitted reflecting the 21–day PHI, the decrease in the tolerance reflected in the August 2002 TRED is appropriate at 0.1 ppm in or on grapes with a PHI of 21 days. However, EPA concluded that residues be expressed as fenarimol parent only, rather than the combined residues of fenarimol and its metabolites because parent only would be an adequate indicator of misuse and would harmonize with the CODEX MRLs. Therefore, EPA is proposing to recodify from 40 CFR 180.421(a)(2) to (a)(1) the tolerance for residues of fenarimol and its metabolites in or on ''grape'' at 0.2 ppm and to decrease the tolerance from 0.2 to 0.1 ppm.

Currently, a tolerance in 40 CFR 180.421(a)(2) for combined residues of fenarimol and its metabolites in or on

banana exists at 0.5 ppm where not more than 0.25 ppm shall be present in the pulp after peel is removed. Fenarimol is presently not registered for use on banana in the United States. Based on foreign field trial data that indicate residues of fenarimol as high as 0.19 ppm and 0.075 ppm for its metabolites, the Agency determined that a tolerance of 0.25 ppm is appropriate for whole banana. It is current Agency practice to establish a tolerance on the whole commodity (including peel after removing and discarding crown tissue and stalk). Therefore, EPA is proposing to revise the tolerance commodity terminology in 40 CFR 180.421(a)(2) from ''banana (Not more than 0.25 ppm shall be present in the pulp after peel is removed)'' to ''banana'' and decrease the tolerance from 0.5 to 0.25 ppm.

Currently, tolerances in 40 CFR 180.421(a)(1) are expressed in terms of residues of fenarimol, while tolerances in (a)(2) are expressed in terms of combined residues of fenarimol and specific metabolites (calculated as fenarimol). As stated in the October 2001 Fenarimol Product and Residue Chemistry Chapter, EPA concluded that for enforcement purposes, the tolerances for plant commodities should be expressed in terms of parent only; i.e., residues of fenarimol per se would be an adequate indicator of misuse. Therefore, EPA is proposing to revise the tolerance expression to residues of fenarimol for the tolerances on ''banana'' and ''cherry,'' recodify these tolerances from 40 CFR 180.421(a)(2) to (a), and recodify all tolerances from 180.421(a)(1) to (a).

3. *Imazalil*. Tolerances for residues in livestock commodities are currently expressed as the combined residues of imazalil, 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole, and its metabolite, 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol. Metabolites, with their parent compound, should serve as marker compounds which should be used to determine residue values for the dietary risk assessment. EPA has found that any metabolite containing the 2,4-dichlorophenyl moiety is of toxicological concern and must be included in the tolerance expression along with the parent compound imazalil. In order to account for the 2,4-dichlorophenyl group moiety toxicological concerns, the total toxic residues for imazalil will be adjusted using the ratios of imazalil and the marker metabolites (FK772 and FK284) that were found to account for a high percentage of the total toxic residues in the livestock metabolism studies. Therefore, EPA is proposing to amend the tolerance expression for livestock commodities for imazalil in 40 CFR 180.413 (a)(2) to regulate imazalil, 3-[2-(2,4-dichlorophenyl)-2-(2,3-dihydroxypropoxy)ethyl]-2,4-imidazolidinedione (FK772), and 3-[2-(2,4-dichlorophenyl)-2-(hydroxy)]-2,4-imidazolidinedione (FK284).

Because a tolerance exists for combined imazalil residues of concern on whole banana at 3.0 ppm and whole bananas are defined as the peel and the pulp after discarding the crown tissue and stalk, the tolerance on banana pulp at 0.2 ppm is no longer necessary. Therefore, the Agency is proposing to revoke the tolerance in 40 CFR 180.413(a) for the combined imazalil residues of concern in or on ''banana, pulp'' and revise the tolerance commodity terminology from ''banana (whole)'' to ''banana.''

Because dried citrus is no longer considered to be a significant feed item for hogs, and because there are no other hog feeding commodities associated with existing imazalil tolerances, there is no reasonable expectation of finite residues of imazalil in hog tissues. Therefore, the Agency believes that tolerances on hog fat, hog liver, hog meat, and hog meat byproduct are no longer needed. Hence, EPA is proposing to revoke, in 40 CFR 180.413(a)(2), tolerances for combined imazalil residues of concern in or on the following: ''Hog, fat''; ''hog, liver''; ''hog, meat''; and ''hog, meat byproducts.''

In Tolerance Summary table for both the Imazalil TRED and Residue Chemistry Chapter, the recommendation to revoke horse fat was an inadvertent entry. There is no basis for revocation of horse fat listed in either document. Consequently, the Agency has revised the Imazalil Residue Chemistry Chapter accordingly and the ''horse, fat'' tolerance in 40 CFR 180.413(a)(2) will be maintained.

Cattle feeding data show that combined imazalil residues of concern ranged as high as just slightly greater than 0.05 ppm in milk at an exaggerated 5x feeding level, and therefore, the tolerance on milk should be increased from 0.01 to 0.02 ppm. Consequently, EPA is proposing to increase the tolerance in 40 CFR 180.413(a)(2) for combined imazalil residues of concern in milk to 0.02 ppm.

Also, the cattle feeding data show that combined imazalil residues of concern ranged as high as 14.7 ppm in liver at an exaggerated 70x feeding level, and therefore, the liver tolerances of cattle, goats, horse, and sheep should be decreased from 0.5 to 0.2 ppm. In addition, because exaggerated feeding data show combined imazalil regulated residues were highest in liver and the tolerance for meat byproducts should be equivalent to the level which is highest for either meat or any individual organ for which residues were measured, tolerances for the meat byproducts of cattle, goats, horses, and sheep should each be increased from 0.01 to 0.2 ppm. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.413(a)(2) for ''cattle, meat byproducts''; ''goat, meat byproducts''; ''horse, meat byproducts''; and ''sheep, meat byproducts'' from 0.01 to 0.2 ppm. However, because increasing these meat byproduct tolerances to 0.2 ppm would cover their respective animal liver commodities, separate tolerances at 0.2 ppm in 40 CFR 180.413(a)(2) for ''cattle, liver''; ''goat, liver''; ''horse, liver''; and ''sheep, liver'' are not needed. Therefore, EPA is proposing in 40 CFR 180.413(a)(2) to remove current tolerances for ''cattle, liver''; ''goat, liver''; ''horse, liver''; and ''sheep, liver'' rather than modify them because these commodities would be covered.

Based on grain data that indicate the regulated residues of imazalil in or on barley grain and wheat grain are above the limit of quantitation (LOQ) of 0.08 ppm, the Agency determined to increase the tolerances for barley grain and wheat grain, each to 0.1 ppm. Therefore, the Agency is proposing to increase, in 40 CFR 180.413(a), tolerances for residues of imazalil in or on ''barley, grain'' and ''wheat, grain'' from 0.05 to 0.1 ppm.

Based on residue data that indicate levels of imazalil and its metabolite in citrus oil as high as 187 ppm, the Agency determined that a tolerance of 200 ppm is warranted for citrus oil. Citrus oils are not considered ready-to-eat and are used primarily as a minor ingredient in chewing gums, baked goods, gelatins, and puddings. The dilution factor for citrus oil (238X) in its conversion to ready-to-eat form exceeds the average concentration factor (28X based on oranges) from the raw agricultural commodity to the oil by a factor of 8.5. As consumed, the concentration of imazalil and its metabolite, expressed as imazalil equivalents, are expected to be less than the concentration in the raw agricultural commodity (whole fruit). Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.413(a), for residues of imazalil in ''citrus oil'' from 25.0 to 200.0 ppm.

Because the Agency now considers barley hay and wheat hay to be raw agricultural commodities (RACs), tolerances are warranted. Based on residue data for forage and straw of barley and wheat that indicate residues of concern as high as 0.12 ppm for

spring barley straw and 0.24 ppm for winter wheat straw (each after a 2x correction factor for storage stability), and by translating available data for barley forage and straw to barley hay and available data for wheat forage and straw to wheat hay, EPA determined that tolerances on hay should be established at 0.5 ppm. Therefore, EPA is proposing to establish separate tolerances in 40 CFR 180.413(a) for residues of imazalil in or on ''barley, hay'' and ''wheat, hay'' at 0.5 ppm each.

4. *Oryzalin*. In order to conform to current Agency practice, EPA is proposing in 40 CFR 180.304(a) to revise the commodity terminology ''small fruit'' at 0.05 ppm into individual tolerances for ''berry, group 13''; ''cranberry''; ''grape''; and ''strawberry'' each at 0.05 ppm. Also, EPA is proposing to revise commodity terminology to conform to current Agency practice as follows: ''Fruit, citrus'' to ''fruit, citrus, group 10''; ''fruit, pome'' to ''fruit, pome, group 11'' and ''fruit, stone'' to ''fruit, stone, group 12.''

In addition, in order to conform to current Agency practice, EPA is proposing to recodify the regional tolerances for guava and papaya from 40 CFR 180.304(b) to (c), and establish and reserve sections for emergency exemptions in 40 CFR 180.304(b) and indirect or inadvertent residues in 40 CFR 180.304(d).

5. *Sodium acifluorfen*. Tolerances for sodium acifluorfen are currently expressed as the combined residues of the herbicide sodium salt of acifluorfen (sodium 5-[2-chloro-4-trifluoromethyl)phenoxy]-2-nitrobenzoic acid) and its metabolites (the corresponding acid, methyl ester, and amino analogues). Typically, the salt form of an acid is expressed with the suffix ''ate,'' and therefore a salt of nitrobenzoic acid should be termed a ''nitrobenzoate.'' While the tolerance expression for sodium acifluorfen in 40 CFR 180.383 is appropriate, EPA is proposing to revise only the name of the sodium salt of acifluorfen in the tolerance expression from ''sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoic acid'' to ''sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate.''

Based on field trial data that indicate residues of sodium acifluorfen in or on rice straw as high as 0.124 ppm, the Agency determined that the tolerance for rice straw should be increased to 0.2 ppm. Therefore, EPA is proposing to increase the tolerance for ''rice, straw'' in 40 CFR 180.383 from 0.1 to 0.2 ppm.

In order to conform to current Agency practice in 40 CFR 180.383, EPA is proposing to revise commodity terminology for ''soybean'' to ''soybean, seed.''

6. *Trifluralin*. Because there have been no active registered uses for trifluralin on mung bean sprouts or upland cress since 1989, and therefore the tolerances are no longer needed, EPA is proposing to revoke the tolerances in 40 CFR 180.207 for residues of trifluralin in or on ''bean, mung, sprouts'' and ''cress, upland.''

Because adequate residue data exists for field corn grain and data may be bridged from wheat and sorghum processing studies to barley, sorghum, and wheat, the Agency has determined that the commodity group for grain, crops, except corn, sweet and rice is inappropriate and should be revoked concomitant with the establishment of individual tolerances for barley grain and sorghum grain. No active registrations have existed on oats since cancellation of a soil treatment for oats in May 2001, and therefore an oat grain tolerance is not needed. Separate tolerances already exist for corn and wheat grain. Based on translating available residue data from wheat and sorghum processing studies which showed that trifluralin residues were non-detectable (<0.01 ppm) in or on wheat grain and sorghum grain, the Agency determined that the tolerances for barley grain and sorghum grain should each be established at 0.05 ppm (the enforcement method LOQ). Therefore, EPA is proposing in 40 CFR 180.207 to revoke the group tolerance ''grain, crop, except corn, sweet and rice grain'' and establish individual tolerances for ''barley, grain'' and ''sorghum, grain, grain;'' each at 0.05 ppm.

In order to conform to current Agency practice, the obsolete commodity definition for ''legume, forage'' should be revised to ''vegetable, foliage of legume, group 7'' and ''alfalfa, forage.'' Based on field residue data that indicate residues of trifluralin as high as 2.2 ppm on alfalfa forage, the Agency determined that the appropriate tolerance should be increased from 0.05 to 3.0 ppm. Therefore, EPA is proposing to revise the commodity tolerance for ''legume, forage'' in 40 CFR 180.207 at 0.05 ppm into ''vegetable, foliage of legume, group 7'' at 0.05 ppm and an individual tolerance for ''alfalfa, forage,'' increasing the tolerance for ''alfalfa, forage'' from 0.05 to 3.0 ppm.

Because celery data will be translated to endive, and because residue data are not available on all of the representative commodities from Crop Group 4, the Agency determined that the commodity group for ''vegetable, leafy'' should be revised to ''vegetable, leaves of root and tuber, group 2'' and ''vegetable, brassica, leafy group 5'' with separate tolerances for ''celery'' and ''endive.'' Therefore, EPA is proposing in 40 CFR 180.207 for residues of trifluralin to remove the commodity group ''vegetable, leafy, except brassica'' and replace it with separate tolerances for ''celery''; ''endive''; ''vegetable, leaves of root and tuber, group 2''; and ''vegetable, brassica, leafy group 5'' at 0.05 ppm.

In order to conform to current Agency practice, the obsolete commodity definition for ''vegetables, root (exc. carrots)'' should be revised to ''vegetable, root and tuber, group 1, except carrot'' and ''vegetable, bulb, group 3.'' Based on available trifluralin residue data for the representative commodities from each group (residues on radishes as high as 0.026 ppm; residues on green onions as high as 0.016 ppm), EPA determined that a tolerance of 0.05 ppm is appropriate for each group. Therefore, EPA is proposing to revise the commodity tolerance for ''vegetable, root (exc. carrot)'' in 40 CFR 180.207 at 0.05 ppm to ''vegetable, root and tuber, group 1, except carrot'' and ''vegetable, bulb, group 3,'' each at 0.05 ppm.

In addition, the obsolete commodity definition for ''seed and pod vegetables'' group should be revised to ''vegetable, legume, group 6'' and separate tolerances for ''okra'' and ''dill.'' However, because there have been no active registrations for dill since October 1995 and the tolerance is no longer needed, the Agency does not believe there is reason to maintain a dill tolerance, and EPA is not proposing to establish one. Based on the available data for okra and selected members of crop group 6, a tolerance of 0.05 ppm would be appropriate for each. Therefore, EPA is proposing, in 40 CFR 180. 207, for resides of trifluralin to revise the commodity tolerance for ''vegetables, seed and pod'' in 40 CFR 180.207 at 0.05 ppm to ''vegetable, legume, group 6'' and ''okra,'' each at 0.05 ppm.

Based on data that indicate residues of trifluralin in or on alfalfa hay as high as 1.6 ppm, the Agency determined that the alfalfa hay tolerance should be increased to 2.0 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.207 for residues of trifluralin in or on ''alfalfa, hay'' from 0.2 to 2.0 ppm.

Based on data that indicate residues of trifluralin in or on peanut hay, as high as 0.014 ppm, the Agency determined that a tolerance should be established for peanut hay at 0.05 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.207 for

residues of trifluralin in or on ''peanut, hay'' at 0.05 ppm.

Based on available mustard seed data that indicate residues of trifluralin are non-detectable (<0.01 ppm), tree nut field trial data, and weight of evidence for trifluralin residues in tree crops that indicate residues of trifluralin in or on almond hulls are expected to be non-detectable (<0.01 ppm), the Agency determined that tolerances should be established for mustard seed and almond hulls, each at 0.05 ppm (the enforcement method LOQ). Therefore, EPA is proposing to establish tolerances in 40 CFR 180.207 for residues of trifluralin in or on ''mustard, seed'' and ''almond, hulls;'' each at 0.05 ppm.

Available data show that residues of trifluralin in or on cotton gin byproducts are warranted at 0.05 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.207 for residues of trifluralin in or on ''cotton, gin byproducts'' at 0.05 ppm.

EPA is proposing to revise commodity terminology in 40 CFR 180.207 to conform to current Agency practice as follows: ''Hop'' is proposed to be changed to read ''hop, dried cones'' and ''sorghum, forage'' is proposed to be changed to read ''sorghum, grain, forage.''

7. *Ziram*. Currently, tolerances for the fungicide ziram in 40 CFR 180.116 are expressed in terms of residues of ziram (zinc dimethyldithiocarbamate), calculated as zineb (zinc ethylenebisdithiocarbamate). However, the tolerances for ziram and other dithiocarbamates are enforced by a common moiety method that determines carbon disulfide. (Decomposition or acid digestion of dithiocarbamates generates carbon disulfide). Also, the CODEX residue definition for dithiocarbamates is expressed as carbon disulfide. Consequently, the Agency believes that the tolerance expression for ziram should be expressed in terms of carbon disulfide. Such a change in tolerance expression allows harmonization of U.S. tolerances with Codex MRLs and should also apply to the other dithiocarbamate fungicides that are determined by the carbon disulfide common moiety method and have current tolerances. Nevertheless, according to 40 CFR 180.3(d)(5), total dithiocarbamate residue on the same raw agricultural commodity shall not exceed that permitted by the highest tolerance for any one member of the class, calculated as zineb (zinc ethylenebisdithiocarbamate). Consequently, in the interim, until all dithiocarbamate tolerance expressions can be changed simultaneously and 40 CFR section 180.3(d)(5) revised, EPA is proposing in 40 CFR 180.116 to amend the tolerance expression for residues of ziram (zinc dimethyldithiocarbamate), from calculated as zineb (zinc ethylenebisdithiocarbamate) to calculated as zineb (zinc ethylenebisdithiocarbamate) and carbon disulfide.

Because the associated commodity registrations have not been active since 1991 and the tolerances are no longer needed, EPA is proposing to revoke, in 40 CFR 180. 116, tolerances for residues of ziram in or on the following: ''Broccoli''; ''Brussel sprouts''; ''carrot, root''; ''collards''; ''gooseberry''; ''kale''; ''kohlrabi''; ''lettuce''; ''loganberry''; ''onion''; ''peanut''; ''pea''; ''radish, roots''; ''radish, tops''; ''raspberry''; ''rutabaga, roots''; ''rutabaga, tops''; ''spinach''; ''turnip, greens''; and ''turnip, roots.''

Because registrations for ziram use on eggplant and pepper have not been active since 1994, and the tolerances are no longer needed, EPA is proposing to revoke, in 40 CFR 180.116, tolerances for residues of ziram in or on the following: ''eggplant'' and ''pepper.''

Because registrations for ziram use on bean, celery, cranberry, cucumber, melon, pumpkin, and squash have not been active since 1995, and the tolerances are no longer needed, EPA is proposing to revoke, in 40 CFR 180.116, tolerances for residues of ziram in or on the following: ''Bean''; ''celery''; ''cranberry''; ''cucumber''; ''melon''; ''pumpkin''; ''squash''; and ''squash, summer.''

Because the last food-use U.S. registration for ziram use on quince was cancelled in 1996, and the tolerance is no longer needed, EPA is proposing to revoke the tolerance in 40 CFR 180. 116 for ziram residues in or on ''quince.''

The last U.S. registration for ''beet, garden, roots''; ''beet, garden, tops''; ''cabbage''; and ''cauliflower;'' was canceled due to non-payment of the year 2005 maintenance fee as announced in a **Federal Register** Notice published on August 3, 2005 (70 FR 44637) (FRL–7726–4). The Agency permitted the sale and distribution of existing stocks until January 15, 2006. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by January 15, 2007. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.116 for ziram residues in or on ''beet, garden, roots''; ''beet, garden, tops''; ''cabbage''; and ''cauliflower'' each with an expiration/revocation date of January 15, 2007.

Active ziram registrations currently exist for blackberries. However, ziram tolerances at 7.0 ppm on ''boysenberry''; ''dewberry''; and ''youngberry''; are no longer needed because their uses are covered by the existing tolerance at 7.0 ppm on blackberry. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.116 for ''boysenberry''; ''dewberry''; and ''youngberry.''

In accordance with 40 CFR 180.1(h) which indicates that the tolerance for peach also covers the use in or on nectarines, the tolerance on nectarine is no longer needed. Therefore, EPA is proposing to remove the tolerance in 40 CFR 180.116 for residues of ziram in or on ''nectarine.''

Based on field trial data that indicate residues of ziram in or on almond hulls as high as 18.6 ppm, the Agency has determined that a tolerance should be established on almond hulls at 20 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.116 for ''almond, hulls'' at 20.0 ppm.

Based on field trial data that indicate residues of ziram in or on apricots as high as 18.5 ppm, the Agency determined that the tolerance for apricot should be increased to 20 ppm. Therefore, the Agency is proposing to increase the tolerance for ''apricot'' in 40 CFR 180.116 from 7.0 to 20.0 ppm.

Based on field trial data that indicate residues of ziram in or on apple, pear, and cherry at 5.6, and 5.7, and 5.5 ppm, respectively, the Agency determined that tolerances for apple, pear, and cherry should be decreased to 6.0 ppm. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.116 from 7.0 to 6.0 ppm for the following: ''Apple''; ''pear''; and ''cherry.''

Based on field trial data that indicates residues of ziram in or on tomatoes at less than 7.0 ppm, the Agency determined that the tomato tolerance should be decreased to 2.0 ppm. Therefore, EPA is proposing to decrease the tolerance for ''tomato'' in 40 CFR 180.116 from 7.0 to 2.0 ppm.

Also, while the ziram RED recommends revocation for the tolerance on ''strawberry,'' active registrations associated with that commodity use currently exist, and therefore the tolerance will not be proposed for revocation at this time. However, the Agency intends to follow-up with the registrants and expects to propose revocation in a future **Federal Register** Notice.

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C.

346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the Food Quality Protection Act (FQPA). The safety finding determination is discussed in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for endosulfan, sodium acifluorfen, and ziram; and TREDs for fenarimol, imazalil, oryzalin, and trifluralin. (REDs for oryzalin and trifluralin were both completed prior to FQPA. The imazalil RED followed the TRED and because fenarimol was registered after November 1, 1984, it did not need to undergo reregistration, and therefore a RED was not needed). REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.
2. There is a reasonable expectation that finite residues will exist.
3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

### *C. When do These Actions Become Effective?*

With the exception of certain tolerances for ziram for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that tolerance revocations, modifications, establishments, and commodity terminology revisions become effective on the date of publication of the final rule in the **Federal Register**. With the exception of ziram, the Agency believes that the proposed revocations herein will affect tolerances for uses which have been canceled for many years or are no longer needed and that treated

commodities have had sufficient time for passage through the channels of trade. EPA is proposing an expiration/revocation date of January 15, 2007, for certain ziram tolerances. The Agency believes that this revocation date allows users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

*D. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of March 13, 2006, EPA has reassessed over 7,860 tolerances. Regarding tolerances mentioned in this proposed rule, tolerances in existence as of August 2, 1996, were previously counted as reassessed at the time of the signature completion of a post-FQPA RED or TRED for each active ingredient. Therefore, no further tolerance reassessments would be counted toward the August 2006 review deadline.

## III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

## IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the

present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

**List of Subjects in 40 CFR Part 180**

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

Dated: April 11, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 180—AMENDED

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

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

2. Section 180.116 is amended by revising paragraph (a) to read as follows:

**§ 180.116 Ziram; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the fungicide ziram (zinc dimethyldithiocarbamate) calculated as zineb (zinc ethylenebisdithiocarbamate) and carbon disulfide, in or on the following food commodities:

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Almond | 0.1[1] | None |
| Almond, hulls | 20.0[1] | None |
| Apple | 6.0[1] | None |
| Apricot | 20.0[1] | None |
| Beet, garden, roots | 7.0[1] | 1/15/07 |
| Beet, garden, tops | 7.0[1] | 1/15/07 |
| Blackberry | 7.0[1] | None |
| Blueberry | 7.0[1] | None |
| Cabbage | 7.0[1] | 1/15/07 |
| Cauliflower | 7.0[1] | 1/15/07 |
| Cherry | 6.0[1] | None |
| Grape | 7.0[1] | None |
| Huckleberry | 7.0[1] | None |
| Peach | 7.0[1] | None |
| Pear | 6.0[1] | None |
| Pecan | 0.1[1] | None |
| Strawberry | 7.0[1] | None |
| Tomato | 2.0[1] | None |

[1] See footnote 1 to § 180.114.

* * * * *

3. Section 180.182 is amended by revising paragraph (a) to read as follows:

**§ 180.182 Endosulfan; tolerances for residues.**

(a) *General.* (1) Tolerances are established for the combined residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) (alpha and beta isomers) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Alfalfa, fresh | 0.3 |
| Alfalfa, hay | 1.0 |
| Almond | 0.3 |
| Almond, hulls | 1.0 |
| Apple | 1.0 |
| Apple, wet pomace | 5.0 |
| Apricot | 2.0 |
| Barley, grain | 0.3 |
| Barley, straw | 0.4 |
| Bean | 2.0 |
| Blueberry | 0.3 |
| Broccoli | 3.0 |
| Brussels sprouts | 2.0 |
| Cabbage | 4.0 |
| Carrot, roots | 0.2 |
| Cattle, fat | 13.0 |
| Cattle, liver | 5.0 |
| Cattle, meat | 2.0 |
| Cattle, meat byproducts, except liver | 1.0 |
| Cauliflower | 2.0 |
| Celery | 8.0 |
| Cherry, sour | 2.0 |
| Cherry, sweet | 2.0 |
| Collards | 2.0 |
| Corn, sweet, forage | 12.0 |
| Corn, sweet, kernel plus cob with husks removed | 0.2 |
| Corn, sweet, stover | 14.0 |
| Cotton, gin byproducts | 30.0 |
| Cotton, undelinted seed | 1.0 |
| Eggplant | 1.0 |
| Filbert | 0.2 |
| Goat, fat | 13.0 |
| Goat, liver | 5.0 |
| Goat, meat | 2.0 |
| Goat, meat byproducts, except liver | 1.0 |
| Grape | 2.0 |
| Hog, fat | 13.0 |
| Hog, liver | 5.0 |
| Hog, meat | 2.0 |
| Hog, meat byproducts, except liver | 1.0 |
| Horse, fat | 13.0 |
| Horse, liver | 5.0 |
| Horse, meat | 2.0 |
| Horse, meat byproducts, except liver | 1.0 |
| Kale | 2.0 |
| Lettuce, head | 11.0 |
| Lettuce, leaf | 6.0 |
| Milk, fat (=N in whole milk) | 2.0 |
| Mustard greens | 2.0 |
| Mustard, seed | 0.2 |
| Nectarine | 2.0 |
| Nut, macadamia | 0.2 |
| Oat, grain | 0.3 |
| Oat, straw | 0.4 |
| Peach | 2.0 |
| Pear | 2.0 |
| Pea, succulent | 2.0 |
| Pecan | 0.2 |
| Pepper | 2.0 |
| Pineapple | 1.0 |
| Pineapple, process residue | 20.0 |
| Plum | 2.0 |

| Commodity | Parts per million |
|---|---|
| Plum, prune | 2.0 |
| Potato | 0.2 |
| Rapeseed, seed | 0.2 |
| Rye, grain | 0.3 |
| Rye, straw | 0.3 |
| Sheep, fat | 13.0 |
| Sheep, liver | 5.0 |
| Sheep, meat | 2.0 |
| Sheep, meat byproducts, except liver | 1.0 |
| Spinach | 2.0 |
| Strawberry | 2.0 |
| Sugarcane, cane | 0.5 |
| Sweet potato, roots | 0.15 |
| Tomato | 1.0 |
| Turnip, roots | 0.2 |
| Turnip, tops | 2.0 |
| Vegetable, cucurbit, group 9 | 1.0 |
| Walnut | 0.2 |
| Watercress | 2.0 |
| Wheat, grain | 0.3 |
| Wheat, straw | 0.4 |

(2) A tolerance of 24 parts per million is established for the combined residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) (alpha and beta isomers) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on dried tea (reflecting less than 0.1 part per million residues in beverage tea) resulting from application of the insecticide to growing tea.

* * * * *

4. Section 180.207 is amended by revising paragraph (a) to read as follows:

**§ 180.207 Trifluralin; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide and plant growth regulator trifluralin (alpha, alpha, alpha-trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Alfalfa, forage | 3.0 |
| Alfalfa, hay | 2.0 |
| Almond, hulls | 0.05 |
| Asparagus | 0.05 |
| Barley, grain | 0.05 |
| Barley, hay | 0.05 |
| Barley, straw | 0.05 |
| Carrot, roots | 1.0 |
| Celery | 0.05 |
| Corn, field, forage | 0.05 |
| Corn, field, grain | 0.05 |
| Corn, field, stover | 0.05 |
| Cotton, gin byproducts | 0.05 |
| Cotton, undelinted seed | 0.05 |
| Endive | 0.05 |
| Flax, seed | 0.05 |
| Fruit, citrus, group 10 | 0.05 |
| Fruit, stone, group 12 | 0.05 |
| Grape | 0.05 |
| Hop, dried cones | 0.05 |
| Mustard, seed | 0.05 |
| Nut, tree, group 14 | 0.05 |
| Okra | 0.05 |
| Peanut | 0.05 |
| Peanut, hay | 0.05 |
| Peppermint oil | 2.0 |
| Peppermint, tops | 0.05 |
| Rapeseed, seed | 0.05 |
| Safflower, seed | 0.05 |
| Sorghum, grain, forage | 0.05 |
| Sorghum, grain, grain | 0.05 |
| Sorghum, grain, stover | 0.05 |
| Spearmint oil | 2.0 |
| Spearmint, tops | 0.05 |
| Sugarcane, cane | 0.05 |
| Sunflower, seed | 0.05 |
| Vegetable, brassica, leafy group 5 | 0.05 |
| Vegetable, bulb, group 3 | 0.05 |
| Vegetable, cucurbit, group 9 | 0.05 |
| Vegetable, foliage of legume, group 7 | 0.05 |
| Vegetable, fruiting, group 8 | 0.05 |
| Vegetable, leaves of root and tuber, group 2 | 0.05 |
| Vegetable, legume, group 6 | 0.05 |
| Vegetable, root and tuber, group 1, except carrot | 0.05 |
| Wheat, grain | 0.05 |
| Wheat, straw | 0.05 |

* * * * *

5. Section 180.304 is revised to read as follows:

**§ 180.304 Oryzalin; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide oryzalin (3,5-dinitro-$N^4$,$N^4$-dipropylsulfanilamide) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Almond, hulls | 0.05 |
| Avocado | 0.05 |
| Berry, group 13 | 0.05 |
| Cranberry | 0.05 |
| Fig | 0.05 |
| Fruit, citrus, group 10 | 0.05 |
| Fruit, pome, group 11 | 0.05 |
| Fruit, stone, group 12 | 0.05 |
| Grape | 0.05 |
| Kiwifruit | 0.05 |
| Nut, tree, group 14 | 0.05 |
| Olive | 0.05 |
| Pistachio | 0.05 |
| Pomegranate | 0.05 |
| Strawberry | 0.05 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of oryzalin (3,5-dinitro-$N^4$,$N^4$-dipropylsulfanilamide) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Guava | 0.05 |
| Papaya | 0.05 |

(d) *Indirect or inadvertent residues.* [Reserved]

6. Section 180.383 is amended by revising paragraph (a) to read as follows:

**§ 180.383 Sodium salt of acifluorfen; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the herbicide sodium salt of acifluorfen (sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate) and its metabolites (the corresponding acid, methyl ester, and amino analogues) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Peanut | 0.1 |
| Rice, grain | 0.1 |
| Rice, straw | 0.2 |
| Soybean, seed | 0.1 |
| Strawberry | 0.05 |

* * * * *

7. Section 180.413 is amended by revising paragraph (a) to read as follows:

**§ 180.413 Imazalil; tolerances for residues.**

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide imazalil 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Banana | 3.0 |
| Barley, grain | 0.1 |
| Barley, hay | 0.5 |
| Barley, straw | 0.5 |
| Citrus, dried pulp | 25.0 |
| Citrus, oil | 200.0 |
| Fruit, citrus, postharvest | 10.0 |
| Wheat, forage | 0.5 |
| Wheat, grain | 0.1 |
| Wheat, hay | 0.5 |
| Wheat, straw | 0.5 |

(2) Tolerances are established for the combined residues of the fungicide imazalil 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole, and its metabolites, 3-[2-(2,4-

dichlorophenyl)-2-(2,3-dihydroxypropoxy)ethyl]-2,4-imidazolidinedione (FK772) and 3-[2-(2,4-dichlorophenyl)-2-(hydroxy)]-2,4-imidazolidinedione (FK284) in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.01 |
| Cattle, meat | 0.01 |
| Cattle, meat byproducts | 0.2 |
| Goat, fat | 0.01 |
| Goat, meat | 0.01 |
| Goat, meat byproducts | 0.2 |
| Horse, fat | 0.01 |
| Horse, meat | 0.01 |
| Horse, meat byproducts | 0.2 |
| Milk | 0.02 |
| Sheep, fat | 0.01 |
| Sheep, meat | 0.01 |
| Sheep, meat byproducts | 0.2 |

* * * * *

8. Section 180.421 is amended by revising paragraph (a) to read as follows:

**§ 180.421 Fenarimol; tolerances for residues.**

(a) *General*. Tolerances are established for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Apple | 0.1 |
| Apple, wet pomace | 0.3 |
| Banana[1] | 0.25 |
| Cherry | 1.0 |
| Cattle, fat | 0.01 |
| Cattle, kidney | 0.01 |
| Cattle, meat | 0.01 |
| Cattle, meat byproducts, except kidney | 0.05 |
| Goat, fat | 0.01 |
| Goat, kidney | 0.01 |
| Goat, meat | 0.01 |
| Goat, meat byproducts, except kidney | 0.05 |
| Grape | 0.1 |
| Horse, fat | 0.01 |
| Horse, kidney | 0.01 |
| Horse, meat | 0.01 |
| Horse, meat byproducts, except kidney | 0.05 |
| Pear | 0.1 |
| Pecan | 0.02 |
| Sheep, fat | 0.01 |
| Sheep, kidney | 0.01 |
| Sheep, meat | 0.01 |
| Sheep, meat byproducts, except kidney | 0.05 |

[1] There are no U.S. registrations for banana as of April 26, 1995.

* * * * *

[FR Doc. E6–6207 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–HQ–SFUND–1987–0002; FRL–8161–6]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Internal Parcel, encompassing 7,399 acres of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU), from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the Internal Parcel of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the surface media (soil, surface water, sediment) and structures within the Internal Parcel of the On-Post OU of the RMA/NPL Site as well as the groundwater below the Internal Parcel that is east of E Street, with the exception of a small area of contaminated groundwater located in the northwest corner of Section 6. The rest of the On-Post OU, including groundwater below RMA that is west of E Street, and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

**DATES:** Comments must be received on or before on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instruction for submitting comments.
- *E-mail: chergo.jennifer@epa.gov.*
- Fax: 303–312–6961
- Mail: Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.
- Hand Delivery: 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**INSTRUCTIONS:** Direct your comments to Docket ID No. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA's Region 8 Superfund Records

Center, 999 18th Street, Denver, Colorado 80202–2466 and the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748. The Region 8 Docket Facility is open from 8 a.m. to 4 p.m. by appointment, Monday through Friday, excluding legal holidays. The EPA Docket telephone number is 303–312–6473. The RMA's Docket Facility is open from 12 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, or by appointment. The RMA Docket telephone number is 303–289–0362.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; telephone number: 1–800–227–8917 or (303) 312–6601; fax number: 303–312–6961; e-mail address: *chergo.jennifer@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

## I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Internal Parcel of the Rocky Mountain Arsenal/National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the Internal Parcel of the RMA/NPL Site and explains how it meets the deletion criteria.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required;

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.

## III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the Internal Parcel from the RMA/NPL Site:

(1) The Army has requested the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, has concurred with publication of this notice of intent for partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which ends on May 26, 2006, based upon publication of this notice in the **Federal Register** and a local newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty calendar day public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repositories listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Internal Parcel of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repositories listed above after a final document has been published in the **Federal Register**.

## IV. Basis for Intended Partial Deletion

The following information provides EPA's rationale for deletion of the Internal Parcel of the RMA/NPL Site from the NPL and EPA's finding that the proposed final deletion satisfies 40 CFR 300.425(e) requirements. Additional detail is provided in the ''Technical Memorandum in Support of Partial Deletion of the Internal Parcel Deletion Area'' that consolidates all information for the 11.5 square mile area within the On-Post Operable Unit of the RMA/NPL Site.

*RMA/NPL Site Background*

The Rocky Mountain Arsenal was established in 1942 by the U.S. Army, and was used to manufacture chemical warfare agents and incendiary munitions for use in World War II. Prior to this, the area was largely undeveloped ranch and farmland. Following the war and through the early 1980s, the facilities continued to be used by the Army. Beginning in 1946, some facilities were leased to private companies to manufacture industrial and agricultural chemicals. Shell Oil Company, the principal lessee, primarily manufactured pesticides from 1952 to 1982. After 1982, the only activities at the Arsenal involved remediation.

Complaints of groundwater pollution north of the RMA/NPL Site began to surface in 1954. Common industrial and waste disposal practices used during these years resulted in contamination of structures, soil, surface water, and groundwater. As a result of this contamination, the RMA was proposed for inclusion on the NPL on October 15, 1984. The listing of RMA on the NPL, excluding Basin F, was finalized on July 22, 1987. Basin F was added to the RMA/NPL Site listing on March 13, 1989. On February 17, 1989, an interagency agreement—the ''Federal Facility Agreement for the Rocky Mountain Arsenal'' (FFA)—formalizing the process framework for selection and implementation of cleanup remedies at the RMA/NPL Site, became effective. The FFA was signed by the Army, Shell Oil Company, EPA, U.S. Department of the Interior, U.S. Department of Justice, and the Agency for Toxic Substances and Disease Registry.

Prior to the selection of remedial alternatives, a remedial investigation/endangerment assessment/feasibility study (RI/EA/FS) was conducted for the On-Post OU to provide information on the type and extent of contamination, human and ecological risks, and feasibility of remedial actions suitable for application at RMA. The remedial investigation (RI), completed in January 1992, studied each of the five environmental media at the RMA/NPL Site, including soils, water, structures, air, and biota. The feasibility study (FS) was finalized in October 1995, and a proposed remedial action plan was prepared and presented to the public in October 1995.

On June 11, 1996, the Army, EPA, and the State of Colorado signed the ''Record of Decision for the On-Post Operable Unit'' (ROD). The ROD, which formally establishes the cleanup approach to be taken for the On-Post OU, specified the remedial actions to be implemented for soil, structures, and groundwater for the On-Post OU of RMA.

The original On-Post OU of the RMA/NPL Site (see map, RMA Internal Parcel) encompassed 27 square miles (17,000 acres) in southern Adams County, Colorado, approximately 8 miles northeast of downtown Denver. On January 21, 2003, 940 acres known as the Western Tier Parcel were partially deleted from the NPL. This was followed by the partial deletion of 5,053 acres in perimeter areas of RMA on January 15, 2004, which led to the establishment of the Rocky Mountain Arsenal National Wildlife Refuge on April 2, 2004. As a result of these prior partial deletions, the On-Post OU of the RMA/NPL Site currently encompasses 17.2 square miles (11,007 acres).

*Internal Parcel of the On-Post OU*

The Internal Parcel is an area of approximately 7,399 acres (11.5 square miles) in the interior of RMA. The proposed deletion includes all or portions of Sections 1, 2, 3, 4, 6, 10, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, and 35, but excludes areas where the remedy is incomplete such as the former central processing areas, munitions demolition areas, sanitary sewers, select structures, haul roads, and designed drainage areas for future covers (see map).

A remedial investigation (RI) for the On-Post OU, completed in January 1992, studied each of the environmental media at the RMA/NPL Site including soil, sediment, structures, water, air, and biota. Based upon evidence gathered during the RI, areas with similar soil contamination were combined into individual projects. This resulted in twelve separate soil cleanup projects within the Internal Parcel. These include:

(1) The Burial Trenches Soil Remediation project which included two remedy sites in Sections 30 and 32 considered to potentially contain ordnance or explosives, unexploded ordnance, and munitions debris as well as general construction-related debris and trash, and soils that exceeded acceptable contaminant levels for protection of human health (HHE) that was contaminated with chromium and lead;

(2) The CAMU (Corrective Action Management Unit) Soil Remediation project in Sections 23, 24, 25, and 26 including Borrow Area 5 and other areas within the CAMU that contained soils presenting an unacceptable risk to biota (biota-risk) primarily due to pesticides (aldrin and dieldrin);

(3) The Existing (Sanitary) Landfills which included seven remedy sites in Sections 1, 4, 30, and 36 that contained construction debris, metal fragments, asphalt, trash, and asbestos-containing material;

(4) The Lake Sediments Soil Remediation project which included two remedy sites within Section 1 that contained HHE and biota-risk soils contaminated with chlordane, chromium, aldrin, and dieldrin as well as some mercury;

(5) The Miscellaneous Northern Tier Soil Remediation project which included three remedy sites in Sections 24, 25, and 29 that contained HHE and biota-risk soils contaminated with aldrin and dieldrin, chloroacetic acid, and lead;

(6) The Miscellaneous Southern Tier Soil Remediation project which included eight remedy sites in Sections 1, 2, 3, 4, and 12 that contained HHE and biota-risk soils contaminated with aldrin, dieldrin, and heavy metals;

(7) The Munitions Testing Soil Remediation project which included seven remedy sites in Sections 19, 20, 25, 29, and 30 considered to potentially contain slag, munitions debris, and unexploded ordnance;

(8) The North Plants Structures Demolition and Removal project which included one remedy site with HHE and biota-risk soils within Section 25 and structures where the nerve agent GB, also called Sarin, was manufactured;

(9) The Sanitary and Chemical Sewer Plugging project which included two remedy sites in Sections 1, 2, 3, 4, 24, 25, 26, 34, 35, and 36 that contained sewer lines which potentially served as conduits for the migration of groundwater contamination;

(10) The Section 35 Soil Remediation project which included eight remedy sites within Section 35 that contained HHE and biota-risk soils contaminated primarily with aldrin and dieldrin;

(11) The Toxic Storage Yards Soil Remediation project which included three remedy sites within Sections 5, 6, and 31 that contained HHE and biota-risk soils considered to potentially contain chemical warfare agent based on use histories and detections of agent breakdown products; and

(12) The Residual Ecological Risk (RER) Soil project which included 80 remedy sites throughout the RMA/NPL Site that were identified through a ROD (On-Post Record of Decision)—directed process to address soils that present a health risk to biota primarily due to aldrin and dieldrin.

A structures survey identified 798 structures within the RMA/NPL site. Forty-eight of these structures had no

history of contamination and were designated to be retained for future use. The contaminants identified within the other 750 structures include asbestos, pesticides, polychlorinated biphenyls (PCBs), herbicides and heavy metals.

Fifteen individual contaminant groundwater plumes were identified below the western portion of the original RMA site (west of E Street) and consolidated into five plume groups. Treatment of the groundwater plumes is ongoing through operation of groundwater treatment systems and will continue until contaminant concentrations are below remedial action levels. Therefore, the groundwater media below the Internal Parcel west of E Street is not included in this partial deletion and will remain on the RMA/NPL Site. With the exception of a small area of groundwater located in the northwest corner of Section 6, no contaminant plumes were identified in the eastern portion of the Internal Parcel; therefore, most of the groundwater media below the Internal Parcel east of E Street is included in this partial deletion.

A feasibility study (FS) was finalized in October 1995, and a proposed plan prepared and presented to the public in October 1995. On June 11, 1996, the ROD was signed by the Army, EPA, and the State of Colorado. The ROD required the excavation and consolidation of soil presenting a risk to human health, as well as munitions debris, in a state-of-the-art hazardous waste landfill to be built within the On-Post OU; and excavation of debris and soil presenting a risk to biota and placement of those soils in the Basin A consolidation area which is located in the central portion of the RMA/NPL Site. The excavated human health exceedence areas were to be backfilled with on-post borrow material and revegetated. Unexploded ordnance was to be transported off-site for detonation or other demilitarization process, unless the unexploded ordnance was unstable and must be detonated on-site. The ROD also required continued use restrictions for the property.

The remedy for structures included the demolition of the 750 ''no future use'' structures identified in the structures survey. The selected groundwater remedy consisted of continued operation of the On-Post groundwater treatment systems, including three boundary systems and four internal systems. The On-Post ROD also required the ''monitoring and assessment of NDMA (n-nitrosodimethylamine) contamination * * * in support of design refinement/design characterization to achieve remediation goals specified for the boundary groundwater treatment systems.'' This resulted in the addition of an ultraviolet-oxidation system to the NBCS for the treatment of NDMA. Also, water levels in the South Lakes were to be maintained to support aquatic ecosystems, prevent plume migration into the lakes, and cover human health exceedance soils in Lower Derby Lake sediments. Additionally, wells that had the potential to provide a cross-contamination pathway from the contaminated, upper groundwater aquifer to the deeper, confined aquifer were to be closed.

*Community Involvement*

Since 1988, each of the parties involved with the Arsenal cleanup has made extensive efforts to ensure that the public is kept informed on all aspects of the cleanup program. More than 100 fact sheets about topics ranging from historical information to site remediation have been developed and made available to the public. Following the release and distribution of the draft Detailed Analysis of Alternatives report (a second phase of the FS), the Army held an open house for about 1,000 community members. The open house provided opportunity for individual discussion and understanding of the various technologies being evaluated for cleanup of the RMA/NPL Site.

The Proposed Plan for the On-Post OU was released for public review on October 16, 1995. On November 18, 1995, a public meeting was held, attended by approximately 50 members of the public, to obtain public comment on the Proposed Plan. As a result of requests at this meeting, the period for submitting written comments on the plan was extended one month, concluding on January 19, 1996. Minimal comments were received on the alternatives presented for the projects in the Internal Parcel of the On-Post OU. Specifically, the comments requested that excavation of the western tier landfills be ''complete,'' that the health and safety of nearby communities be protected from air emissions during excavation and demolition activities, that additional treatment capabilities or modification of the existing water treatment systems be considered, and that potential dioxin contamination of the entire RMA/NPL Site be evaluated.

The designs for the Miscellaneous Structures, Confined Flow System Well Closure, UV-Oxidation System and each of the soil projects were generally provided to the public for a thirty calendar day review and comment period at both the 30 percent and 95 percent design completion stages (21 separate public comment periods). Each design was also presented for discussion at the regular meetings of the RMA Restoration Advisory Board which is composed of community stakeholders, regulatory agencies, the Army, Shell Oil Company, and the USFWS. No written comments regarding the excavation/demolition approach or the proposed health and safety controls for each project were received.

Upon completion of the thirty calendar day public comment period for this NOIDp, EPA Region 8, in consultation with the State and the Army, will evaluate each comment and any significant new data received before issuing a final decision concerning the proposed partial deletion.

*Current Status*

The Burial Trenches Soil Remediation (Parts I and II) project was completed in 2004. A total of 87,790 bank cubic yards (bcy) of HHE soil, munitions debris and related soil, red ash from mustard demilitarization, and asbestos-containing material was excavated from thirty-one remedy sites within the Internal Parcel and disposed in the on-site hazardous waste landfill. Another 2,119 bcy of material with lesser degrees of contamination, e.g., biota-risk soils, asphalt pavement, general construction debris and trash, were disposed in the Basin A consolidation area. In addition, 520 pounds of ordnance and explosives debris, and general debris—mostly packing materials, were removed from two ''Dense Munitions Debris'' areas and disposed in the hazardous waste landfill.

The CAMU Soil Remediation project was completed in 1998. A total of 278,532 bcy of biota-risk soils were excavated from one remedy site within the Internal Parcel to a depth of one foot and disposed in Basin A.

The Existing (Sanitary) Landfills Remediation (Sections 1 and 30) project was completed in 2005. A total of 148,487 bcy of HHE soil, munitions debris, polychlorinated biphenyl (PCB)-contaminated equipment, and asbestos-containing material was excavated from two remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. Another 1,875 bcy of biota-risk soil were used as cover for the asbestos-containing material in the landfill. Approximately 14,826 bcy of biota risk soils and trash and debris were excavated and disposed in Basin A.

The Lake Sediments Soil Remediation project was completed in 2000. A total of 30,690 bcy of HHE soil, miscellaneous debris and mercury-contaminated biota-risk soils was

excavated from two remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. Another 2,372 bcy of biota risk soil were disposed in Basin A.

The Miscellaneous Northern Tier Soil Remediation project was completed in 2000. A total of 19,400 bcy of HHE soil, debris from one structure with a contamination use history, and asbestos-containing material was excavated from three remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. Another 35,365 bcy of biota-risk soil, demolition debris, sanitary sewer lines and grout-filled manholes, and debris from six structures with no contamination history were disposed in Basin A.

The Miscellaneous Southern Tier Soil Remediation project was completed in 2000. A total of 17,676 bcy of HHE soil, asbestos, and lower concentrations of lead was excavated from four remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. Another 20,008 bcy of biota-risk soil, demolition debris, and structural debris from three buildings and railroad tracks including ballast and ties were taken from the Internal Parcel and disposed in Basin A. In addition, a total of 5,919 bcy of biota-risk soil was excavated and used to backfill an HHE soil excavation and covered with two feet of clean soil.

The Munitions Testing Soil Remediation (Part I) project was completed in 2002. A total of 10,100 bcy of munitions debris was excavated from two remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. No soil/debris was excavated for disposal in Basin A.

The North Plants Structures Demolition and Removal project was completed in 2004. Approximately 800 feet of an 18-inch concrete sewer pipe from one remedy site within the Internal Parcel were excavated and disposed in the hazardous waste landfill. No soil/debris was excavated for disposal in Basin A.

The Sanitary and Chemical Sewer Plugging (Phase I) project was completed in 1998. This project required plugging eighteen sanitary sewer manholes within Section 35 of the Internal Parcel with grout. The sanitary sewer manholes located in Section 24 were plugged, and the entire sewer subsequently excavated to facilitate excavation of clean soils from Borrow Area 5. The excavated sanitary sewer was disposed in Basin A.

The Section 35 Soil Remediation project was completed in 2003. A total of 4,375 bcy of HHE soil, chemical sewers, and associated debris as well as 1,300 linear feet of pipe was excavated from seven remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. Another 121,374 bcy of biota risk soil and miscellaneous debris were disposed in Basin A.

The Toxic Storage Yards Soil Remediation project was completed in 2000. A total of 3,404 bcy of HHE soil, munitions debris and non-routine odorous soils was excavated from two remedy sites within the Internal Parcel and disposed in the hazardous waste landfill. Structural debris from the demolition of nine ''Other Contamination History'' buildings was disposed in Basin A.

The RER (Part 1) project was completed in 2006. A total of 804,348 bcy of RER soil was removed from five borrow areas that are located at least in part within the Internal Parcel. The RER soil from the borrow areas was used as gradefill at depths at least two feet below final grade in areas that will remain in Army control. Twenty-three additional sites located outside of borrow areas and at least partially within the Internal Parcel also required remediation of biota-risk soils. An additional 35,591 bcy of soil was excavated from five of the sites and placed at least two feet below final grade in Army controlled areas; twelve sites (including a portion of one that also required excavation) required tilling with sampling verification that soil concentrations had been adequately reduced; and seven sites (including a portion of one that also required tilling) were determined to be of acceptable risk based on sampling alone. In addition, one of the sites was eliminated based on existing data and another site, where excavation also occurred, was identified for biomonitoring. The biomonitoring data indicated that no further remedy action is required.

Demolition and removal of 97 of the 183 structures slated for removal within the Internal Parcel was completed as part of the Miscellaneous RMA Structure Demolition and Removal—Phase I (completed in 2002) and Phase II (completed in 2006) project. This project consisted of the demolition of the structures and foundations; removal and on-site disposal of structures and foundations, substations, debris piles, roads and parking areas; removal and disposal or recycling of underground storage tanks, structural steel and other metal components; backfilling and grading; and revegetation of the excavated areas. Of the remaining 86 structures, eighteen were demolished as part of the Miscellaneous Northern Tier Soil, Miscellaneous Southern Tier Soil, and Toxic Storage Yards Soil projects; 47 had been demolished prior to remedial action; and 21 structures—currently in use as groundwater treatment facilities and supporting groundwater wells and electrical substations—were incorporated as components of their respective groundwater remedy projects and retained for continued operations until each groundwater remedy component is completed and the structure then demolished as part of that project.

The North and Northwest Boundary Containment Systems continue to treat groundwater and minimize migration of groundwater plumes offsite. The ICS extraction wells met the ROD shut-off criteria and the ICS facility was demolished and removed as part of the Miscellaneous Structures project on May 7, 2002. A treatment system was constructed at the Rail Yard in 2001 to more directly treat the contaminated groundwater associated with the Rail Yard. The Motor Pool extraction wells met shut-down criteria in 1998 and their operation was discontinued. The Basin A Neck Containment System (BANCS) treats groundwater migrating from the Basin A area toward the northwest boundary. Until shut-down of the North of Basin F extraction well in 2000, the groundwater from the Basin F area was treated at the BANCS. Monitoring of groundwater, including that previously extracted/treated at the ICS, Motor Pool, and North of Basin F, is conducted as part of a site-wide monitoring program, as required by the ROD.

In 1997, an ultraviolet-oxidation treatment system was put into operation at the North Boundary Containment System to treat NDMA. The ultraviolet-oxidation treatment is a ''polishing'' step performed after treatment through the carbon filters, and has effectively decreased NDMA concentrations in groundwater to below detectable levels.

Lake Level maintenance requirements are addressed through adherence with the ''Management Plan for Protection and Monitoring of Lake Ladora, Lake Mary and Lower Derby Lake During RMA Remediation'' and the ''Interim Rocky Mountain Arsenal Institutional Control Plan.'' An Explanation of Significant Differences was signed on March 31, 2006, to eliminate maintenance of lake levels to prevent plume migration. This change to the On-Post ROD is based upon groundwater monitoring data that indicate lake level maintenance does not affect plume migration.

The Confined Flow System Well Closure project was completed in 2000. A total of fifty-one wells, twenty-seven in the Internal Parcel, which extended

into the deeper, confined flow aquifer were closed. Closure was accomplished by overdrilling the well casing and installing a grout plug.

Use of the groundwater below the Internal Parcel and surface water for potable drinking purposes is prohibited by the FFA, Public Law 102–402, and the ROD; and will continue to be prohibited even after the Internal Parcel is transferred to the U.S. Department of Interior. Additional prohibitions imposed by the FFA, Public Law 102–402, and the ROD include the use of the Internal Parcel for residential, industrial, and agricultural purposes, and for hunting or fishing for consumptive purposes.

The Army is responsible for ongoing monitoring and maintenance associated with groundwater wells located on land to be transferred to the Department of Interior within the Internal Parcel. The conduct of long-term groundwater monitoring required by the ROD is delineated in the ''Long-Term Monitoring Plan for Groundwater'' with continued, long-term access to groundwater wells delineated in the Interim Rocky Mountain Arsenal Institutional Control Plan.

*Post-ROD Investigations*

Since the signing of the ROD on June 11, 1996, five main studies have been conducted that are relevant to the deletion of the Internal Parcel. The ''Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal'' (2002) was conducted in response to the unexpected discovery of ten M139 bomblets as part of the Miscellaneous Structures—Phase I project in the Section 36 Boneyard (central portion of the RMA/NPL Site). Using state-of-the-art computer imaging, mapping technology, and software capability which had not existed previously, a comprehensive RMA-wide evaluation for the potential presence of ordnance and explosives as well as recovered chemical warfare materiel hazards was completed. The evaluation identified six additional areas for remedial action (none in the Internal Parcel) and concluded that the future discovery of additional sites with ordnance/explosives or recovered chemical warfare materiel hazards is highly unlikely.

This evaluation also resulted in the identification of five areas with dense amounts of subsurface metal and debris, three within the Internal Parcel. A surface sweep and removal of the munitions debris was performed in each of the three areas. Approximately 520 pounds of munitions debris was disposed in the hazardous waste landfill.

In 2001, EPA conducted a four-part Denver Front Range Dioxin Study which determined that the concentration of dioxins at most of the RMA/NPL Site, including the Internal Parcel, is not statistically different from values observed in open space and agricultural areas within the Denver Front Range area. Therefore, there is no significant health risk from dioxin in soils to future Refuge workers, volunteers, or visitors.

As required by the ROD, a Terrestrial Residual Ecological Risk Assessment was completed in 2002. This report concluded that no significant excess terrestrial residual risks will remain after the ROD-required cleanup actions for soil, including additional areas of excavation and tilling identified as part of remedial design refinement as required by the ROD, are completed. In addition, an Aquatic Residual Risk Assessment was completed in 2003. The Assessment presented an evaluation of risks to the great blue heron, shorebird and waterbird and the conclusion that there are no significant risks to aquatic birds in the South Lakes beyond those already identified for remediation in the ROD.

Based on the extensive investigations and risk assessment performed for the Internal Parcel of the RMA/NPL Site, there are no further response actions planned or scheduled for this area. Currently, no hazardous substances remain at the Internal Parcel above health-based levels with respect to anticipated uses of and access to the site, which are limited under the FFA, Public Law 102–402, and the ROD. Because the Internal Parcel is subject to these restrictions on land and water use, it will be included in the RMA-wide five-year reviews. Operation and maintenance of the On-Post boundary and internal groundwater treatment facilities will continue until contaminant concentrations are below remedial action levels, as well as continued maintenance of groundwater wells for long-term groundwater monitoring. As a result, all completion requirements for the Internal Parcel of the On-Post OU have been achieved as outlined in OSWER Directive 9320.2–09A–P.

EPA, with concurrence from the State of Colorado, has determined that all appropriate CERCLA response actions have been completed within the Internal Parcel of the RMA/NPL Site to protect public health and the environment and that no further response action by responsible parties is required. Therefore, EPA proposes to delete the Internal Parcel of the On-Post OU of the RMA/NPL Site from the NPL.

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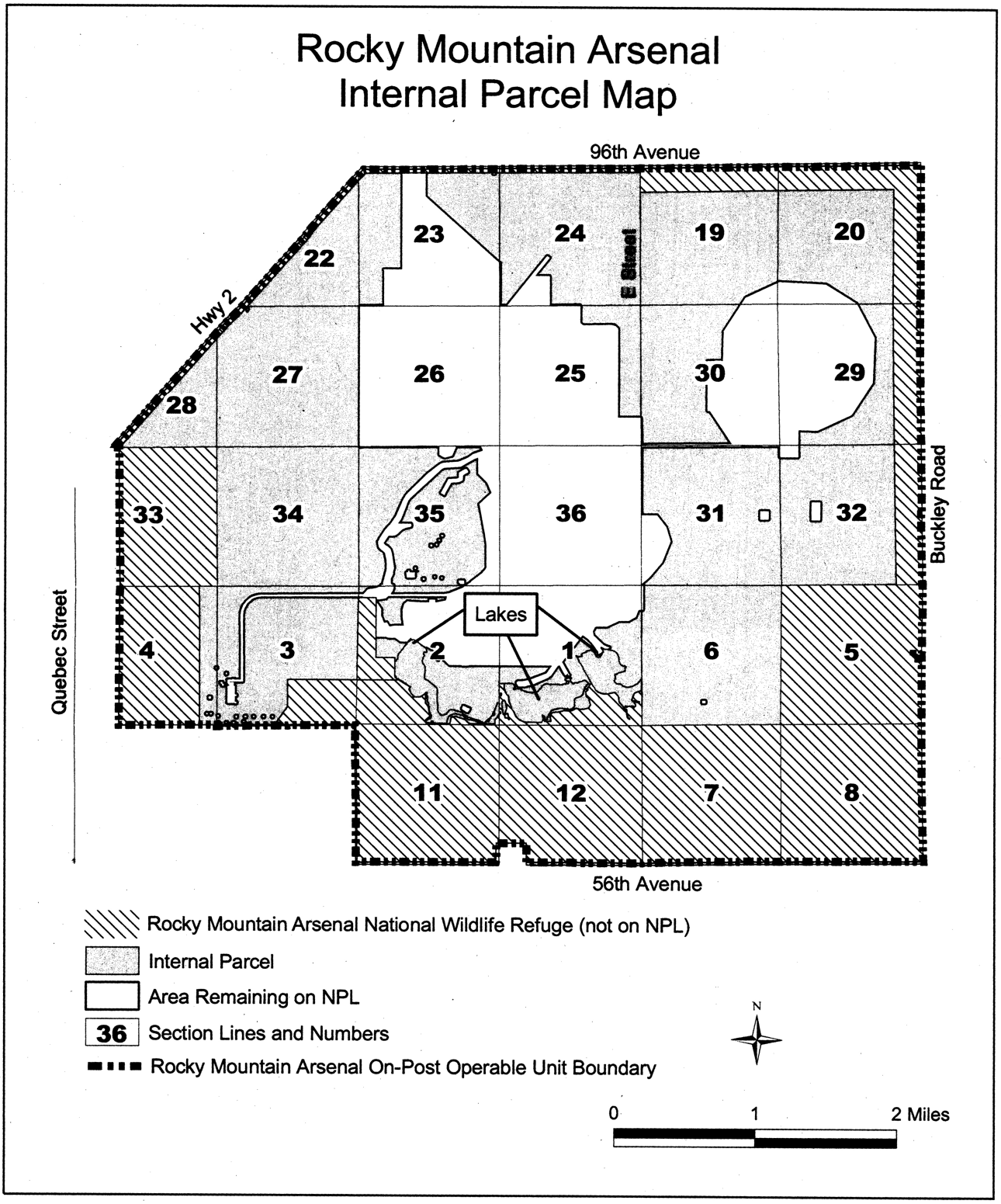


Dated: April 17, 2006.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. 06–3899 Filed 4–25–06; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket No. 02–278; DA 06–808]**

## Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; comments requested.

**SUMMARY:** In this document, the Commission seeks comment on ACA International's (ACA) petition for an expedited clarification and declaratory ruling concerning the Telephone Consumer Protection Act (TCPA) rules.

**DATES:** Comments are due on or before May 11, 2006, and reply comments are due on or before May 22, 2006.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 02–278, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- Mail: Parties who choose to file by paper should also submit their comment on diskette. These diskettes should be submitted, along with three paper copies to Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Room 5–A866, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible formatted using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case CG Docket No. 02–278), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Erica McMahon, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–0346 (voice), *Erica.McMahon@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, DA 06–808, released April 5, 2006. The full text of document DA 06–808, ACA International's submission, and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 06–808, ACA International's submission, and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *http://www.bcpiweb.com* or call 1–800–378–3160. A copy of ACA International's submission may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 02–278 into the proceeding block). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Document DA 06–808 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

### Synopsis

On October 4, 2005, ACA filed a petition for expedited declaratory ruling seeking clarification of the rules under the Telephone Consumer Protection Act (TCPA). *See* Petition for Expedited Declaratory Ruling, filed by ACA, October 4, 2005 (Petition). Specifically,

ACA asks the Commission to clarify that 47 CFR 64.1200(a)(1)(iii) of the Commission's rules does not apply to creditors and collectors when calling telephone numbers to recover payments for goods and services received by consumers. Section 64.1200(a)(1)(iii) of the Commission's rules prohibit the initiation of ''any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice, to any telephone number assigned to * * * cellular telephone service * * *.'' *See* 47 CFR 64.1200(a)(1)(iii) of the Commission's rules. The Commission's rules on autodialed and prerecorded message calls to cell phone numbers incorporated the language of the TCPA virtually verbatim. *See also* 47 U.S.C. 227(b)(1)(iii) of the Communications Act. (''It shall be unlawful for any person within the United States or any person outside the United States if the recipient is within the United States—to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call[]''.)

ACA maintains that autodialed telephone calls are the most efficient way to contact customers. ACA indicates that creditors use autodialers not for telemarketing purposes, but to recover payments for obligations owed to creditors. According to ACA, the calls do not involve advertising or soliciting the sale of products or services; instead, they are placed to ''complete a transaction'' in which the customer has received a product or service. ACA also suggests that many customers today use wireless phones as their primary or preferred method of contact, and that wireless telephone numbers are typically provided by the customers—as part of a credit application, for example—for purposes of receiving calls. In addition, ACA argues that Congress did not intend the TCPA's autodialer restriction to cover calls by or on behalf of creditors when attempting to recover payments. According to ACA, in a 2003 *Report and Order* revising the TCPA rules, the Commission concluded that a predictive dialer is within the meaning and statutory definition of automatic telephone dialing equipment. (Published at 68 FR 44144, July 25, 2003). ACA believes this conclusion has created uncertainty for creditors that use predictive dialers to call wireless phone numbers. Without clarification that creditors' calls are not subject to the restrictions on autodialed calls to wireless numbers, ACA maintains the credit and collections industry will suffer severe economic harm based on the inability to use autodialers to make such calls. Accordingly, the Commission seeks comment on ACA's petition.

Federal Communications Commission.

**Jay Keithley,**

*Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. E6–6022 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 06–796; MB Docket No. 02–167, RM–10479, RM–10770]**

### Radio Broadcasting Services; Eldorado, Fort Stockton, Mason and Mertzon, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** Audio Division, at the request of Katherine Pyeatt, dismisses the petition for rule making proposing the allotment of Channel 241A at Eldorado, Texas (RM–10479). We also deny the counterproposal filed by BK Radio proposing the substitution of Channel 239C2 for Channel 240C2 at Mason, the reallotment of Channel 240C2 from Mason to Mertzon, and the modification of Station KOTY(FM)'s license accordingly (RM–10770). We find that the counterproposal does not constitute a preferential arrangement of allotments because the reallotment of Channel 240C2 to Mertzon as a third local FM transmission service would create a gray area.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 02–167, adopted April 5, 2006, and released April 7, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.)

**List of Subjects in 47 CFR part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6–6296 Filed 4–25–06; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[I.D. 041906B]**

**RIN 0648–AN09**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Amendment 18A

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

**ACTION:** Availability of Amendment 18A to the reef fish resources of the Gulf of Mexico; request for comments.

**SUMMARY:** NMFS announces the availability of Amendment 18A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 18A) prepared by the Gulf of Mexico Fishery Management Council (Council). Amendment 18A would resolve several issues related to monitoring and enforcement of existing regulations, update the framework procedure for setting total allowable catch (TAC), and reduce bycatch mortality of incidentally caught endangered sea turtles and smalltooth sawfish. The intended effect of Amendment 18A is to support the Council's efforts to achieve optimum yield in the fishery, and provide social and economic benefits associated with maintaining stability in the fishery.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, on June 26, 2006.

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

- E-mail: *0648–AN09.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AN09–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Peter Hood.

Copies of Amendment 18A, which includes an Environmental Assessment, a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), are available from the Gulf of Mexico Fishery Management Council, 2203 North Lois, Suite 1100, Tampa, FL 33607; e-mail: *gulfcouncil@gulfcouncil.org*.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, 727–824–5305; fax 727–824–5308; e-mail: *peter.hood@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** Amendment 18A, if implemented, would: (1) Prohibit vessels from retaining reef fish caught under the recreational size and bag/possession limits when commercial quantities of Gulf reef fish are onboard; (2) adjust the number of persons allowed onboard when a vessel with both commercial and charter vessel/headboat permits is fishing commercially; (3) prohibit use of Gulf reef fish, except sand perch or dwarf sand perch, as bait in any commercial or recreational fishery in the exclusive economic zone of the Gulf of Mexico, with a limited exception for crustacean trap fisheries; (4) require a NMFS-approved vessel monitoring system on board vessels with Federal commercial permits for Gulf reef fish, including charter vessels/headboats with such commercial permits; (5) require owners and operators of vessels with Federal commercial or charter vessel/headboat permits for Gulf reef fish to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of incidentally caught sawfish and sea turtles; and (6) revise the TAC framework procedure to reflect current practices and terminology.

A proposed rule that would implement the measure outlined in Amendment 18A has been received from the Council. In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by June 26, 2006, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during theirrespective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 21, 2006.

**James P. Burgess,**

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

[FR Doc. E6–6272 Filed 4–25–06; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 71, No. 80

Wednesday, April 26, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 21, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Requirements of Recognizing the Animal Health Status of Foreign Regions

*OMB Control Number:* 0579–0219

*Summary of Collection:* The Animal and Plant Health Inspection Service (APHIS) is responsible for, among other things, protecting the health of our Nation's livestock and poultry populations by preventing the introduction and spread of serious diseases and pests of livestock and poultry and for eradicating such diseases and pests from the United States when feasible. The regulations in 9 CFR part 92, Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions, set out the process by which a foreign government may request recognition of the animal health status of a region or approval to export animals or animal products to the United States based on the risk associated with animals or animal products from that region. Each request must include information about the region.

*Need and Use of the Information:* APHIS will collection information that might include: (1) The authority, organization, and infrastructure of the Veterinary Service Organization in the region; (2) disease status; (3) the status of adjacent regions with respect to the agent; (4) the extent of an active disease control program, if any, if the agent is known to exist in the region; (5) the vaccination status of the region, when the last vaccination, what is the extent of vaccination if it is currently used, and what vaccine is being used; (6) the degree to which the region is separated from adjacent regions of higher risk through physical or other barriers; (7) the extent to which movement of animal and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements; (8) livestock demographics and marketing practices in the region; (9) the type and extent of surveillance in the region, e.g., is it passive and/or active, what is the quantity and quality of sampling and testing; (10) diagnostic laboratory capabilities, and (11) policies and infrastructure for animal disease control in the region, i.e., emergency response capacity. Without the information the U.S. livestock and poultry industries could suffer serious economic losses as the result of such an incursion, since the value of their products would be diminished both domestically and internationally.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 3.

*Frequency of Responses:* Reporting: On occasion; Other (one-time survey).

*Total Burden Hours:* 120.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–6315 Filed 4–25–06; 8:45 am]

BILLING CODE 3410–34–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado State Advisory Committee will convene at 12:30 p.m. (MST) and adjourn at 4 p.m. (MST), Thursday, May 18, 2006, at the Wellshire Inn, 3333 S. Colorado Blvd., Denver, CO 80222. The purpose of the meeting is to conduct orientation for new advisory committee members; provide an overview of the USCCR including recent Commission activities and new policies affecting Advisory Committees; plan participation in regional project ''Confronting Discrimination in Reservation Border Town Communities'' in Colorado; and consider participation in a project on school desegregation.

Persons desiring additional information, or planning a presentation to the Committee, should contact John F. Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., April 20, 2006.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. E6–6275 Filed 4–25–06; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada State Advisory Committee in the Western Region will convene at 9 a.m. and adjourn at 5 p.m. on Thursday, May 4, 2006, at the Rio All-Suite Hotel, 3700 West Flamingo Road (Lily Room), Las Vegas, Nevada 89103. The purpose of the meeting is to discuss civil rights issues in the state and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Thomas V. Pilla, Civil Rights Analyst of the Western Regional Office, (213) 894–3437 (TDD 213 894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Western Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission. It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, April 20, 2006.

**Ivy L. Davis,**

*Acting, Chief Regional Programs Coordinator.*

[FR Doc. E6–6292 Filed 4–25–06; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Current Population Survey (CPS) School Enrollment Supplement

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before June 26, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *DHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, U.S. Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 2006 CPS. The Census Bureau and the Bureau of Labor Statistics sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 40 years.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support.

This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on pre-primary school enrollment. As part of the Federal Government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

#### II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

#### III. Data

*OMB Number:* 0607–0464.

*Form Number:* There are no forms. We conduct all interviews on computers.

*Type of Review:* Regular.

*Affected Public:* Households.

*Estimated Number of Respondents:* 55,000.

*Estimated Time per Response:* 3.0 minutes.

*Estimated Total Annual Burden Hours:* 2,750.

*Estimated Total Annual Cost:* The only cost to respondents is that of their time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, U.S.C., Section 182, and Title 29, U.S.C., Sections 1–9.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2006.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6–6227 Filed 4–25–06; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### 2007 Company Organization Survey

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before June 26, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the *Internet at DHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Hanczaryk, U.S. Census Bureau, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 763–4058.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) to update and maintain a central, multipurpose Business Register (BR). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-location companies.

The BR serves two fundamental purposes:

- First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and name and address information.
- Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

## II. Method of Collection

The Census Bureau will conduct the 2007 COS in conjunction with the 2007 Economic Census and will coordinate these collections so as to minimize response burden. The consolidated COS/census mail canvass will direct inquiries to the entire universe of multi-location enterprises, which comprises some 182,000 parent companies and more than 1.6 million establishments. The primary collection medium for the COS and Economic Census is a paper questionnaire; however, many enterprises will submit automated/electronic COS and Economic Census reports. For 2007, electronic reporting will be available to all COS and Economic Census respondents. Companies will receive and return responses by secure Internet transmission. Companies that cannot use the Internet will receive a CD–ROM containing their electronic data. All respondents will be allowed to mail the data via diskette or CD-ROM or submit their response data via the Internet. COS data content is identical for all of the reporting modes.

The 2007 COS will include company-level questions to approximately 75,000 multi-location enterprises—those with 50 or more employees or with industrial activities out-of-scope of the 2007 Economic Census. The company-level portion will include inquiries on ownership or control by domestic or foreign parents, ownership of foreign affiliates, leased employment, and off-shoring activities. Additional COS inquiries will apply to the 21,000 multi-unit establishments classified in industries that are out-of-scope of the economic census. The additional inquiries will list an inventory of those out-of-scope establishments and request updates to these inventories, including additions, deletions, and changes to information on EIN, name and address, and industrial classification, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll. The economic census will collect data for all other establishments of multi-establishment enterprises, including those items listed above.

## III. Data

*OMB Number:* 0607–0444.

*Form Number:* NC–99001.

*Type of Review:* Regular submission.

*Affected Public:* Businesses and not-for-profit institutions.

*Estimated Number of Respondents:* 75,000 enterprises.

*Estimated Time Per Response:* .34 hours.

*Estimated Total Annual Burden Hours:* 25,500.

*Estimated Total Annual Cost:* Included is the total annual cost of the BR, which is estimated to be $12.9 million for fiscal year 2007.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 of United States Code, Sections 131, 182, 224, and 225.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2006.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6–6228 Filed 4–25–06; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Census Bureau

## 2007 Commodity Flow Survey

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before June 26, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection

instrument(s) and instructions should be directed to John Fowler, U.S. Census Bureau, Room G–023, FOB 3, Washington, DC 20233, (301) 763–2108 (or via the Internet at *John.L.Fowler@Census.gov*).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Commodity Flow Survey, a component of the Economic Census, is the only comprehensive source of multi-modal, system-wide data on the volume and pattern of goods movement in the United States. These data are used by government transportation analysts at the Federal, state and local levels to estimate the future demand for transportation services and facilities; assess the adequacy of our current transportation infrastructure to accommodate the future demand; and to evaluate the economic, social and environmental impacts of transportation flows. The data also are used extensively by academics, researchers, economic planning organizations, and the business community.

The Commodity Flow Survey is co-sponsored by the Bureau of Transportation Statistics, Research and Innovative Technology Administration, U.S. Department of Transportation. The survey provides data on the movement of commodities in the United States from their origin to destination. The survey produces summary statistics on value, tons, ton-miles, average miles per shipment, commodity shipped, and modes of transportation used. The Census Bureau will publish shipment characteristics at the national, census regions and divisions, state, and Metropolitan Areas levels. Reports are also planned for estimates of hazardous material shipments and exports.

Primary strategies for reducing respondent burden in the Commodity Flow Survey include employing a stratified random sample of business establishments, requesting data on a limited sample of shipment records from each establishment, and accepting estimates.

## II. Method of Collection

The Commodity Flow Survey will survey a sample of business establishments in mining, manufacturing, wholesale, and selected retail industries. The survey also covers auxiliary establishments of multi-establishment companies, which have non-auxiliary establishments that are in-scope to the CFS or classified in retail trade. Each selected establishment will receive, by mail, four questionnaires—one during each quarter of 2007. On each form an establishment will be asked to report data for an average of 25 shipments selected during a designated one-week reporting period. Upon request by the respondent electronic reporting options will be made available.

## III. Data

*OMB Number:* Not Available.

*Form Number:* CFS–1000.

*Type of Review:* Regular review.

*Affected Public:* Business and other for-profit, small businesses or organizations.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 800,000.

*Estimated Total Annual Cost:* $21,600,000.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C. 131.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2006.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6–6229 Filed 4–25–06; 8:45 am]

**BILLING CODE 3510–07–P**

# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–588–835]**

## Oil Country Tubular Goods From Japan: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao or Mark Hoadley, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–3148, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 31, 2005, the Department of Commerce (the Department) received a timely request for an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Japan, with respect to JFE Steel Corporation, Nippon Steel Corporation, NKK Tubes, and Sumitomo Metal Industries, Ltd. On September 28, 2005, the Department published a notice of initiation of this administrative review for the period of August 1, 2004, through July 31, 2005. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 70 FR 56631 (September 28, 2005). The preliminary results of this administrative review are currently due no later than May 3, 2006.

## Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it is not practicable to complete the review within the foregoing time period.

In this administrative review, the Department finds that additional time is required to collect the necessary information to corroborate the statements of two respondents who reported that they did not have any

shipments of the subject merchandise during the period of review. Following our normal practice, the Department has requested detailed entry information from U.S. Customs and Border Protection (CBP). We have also asked both respondents to answer questions concerning their shipments during the period of review. After we receive all of the necessary information from the respondents and CBP, the Department will need time to analyze it and reach a decision. For these reasons, the Department has determined that is it is not practicable to complete the preliminary results of this review within the original time period. Consequently, we are extending the time for the completion of the preliminary results of this review until no later than June 19, 2006, which is 290 days from the last day of the anniversary month of the date of publication of the order.

This notice is published in accordance to sections 751 and 777(i)(1) of the Act.

Dated: April 21, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–6287 Filed 4–25–06; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–821]**

### Notice of Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand

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

**EFFECTIVE DATE:** April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Lyn Johnson or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5287 and (202) 482–4477, respectively.

**Extension of Deadline**

At the request of various parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period January 26, 2004, through July 31, 2005. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue preliminary results of review within 245 days after the last day of the anniversary month of an order for which a review is requested and final results within 120 days after the date on which the preliminary results were published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

This review involves seven respondents. We received below–cost allegations after receipt of questionnaire responses and are currently conducting below–cost investigations for several of these respondents. Further, we have granted requests for extensions to the deadline for responding to our initial and supplemental questionnaires by all seven of the respondents. Due to the number of respondents in this review and the time we need to analyze and incorporate the information from recently filed submissions, we are extending the deadline for issuing the preliminary results of this review by 90 days until August 1, 2006.

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

Dated: April 18, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary, for Import Administration.*

[FR Doc. E6–6283 Filed 4–26–06; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–506]**

### Porcelain–on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review

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

**SUMMARY:** On December 22, 2005, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on porcelain–on-steel cooking ware from the People's Republic of China (''PRC''). See *Porcelain–on-Steel Cooking Ware from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 76027 (''*Preliminary Results*''). Based on our analysis of the record, including comments received since the preliminary results, we have made no changes to the preliminary results. Therefore, the final results do not differ from the preliminary results. *See* Final Results of Review section, below.

**EFFECTIVE DATE:** April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** P. Lee Smith or Scott Fullerton, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–1386, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 22, 2005, the Department published the preliminary results of its administrative review of the antidumping duty order on porcelain–on-steel cooking ware from the PRC. *See Preliminary Results*. The administrative review covers one exporter, Shanghai Watex Metal Co., Ltd. (''Watex''), and its exports of the subject merchandise to the United States during the period December 1, 2003, through November 30, 2004.

We invited parties to comment on our *Preliminary Results*. On January 17, 2006, we received a case brief from Watex. On January 19, 2006, we received petitioner's, Columbian Home Products, LCC (''Columbian''), request for removal of Watex's untimely new factual information from the record. On January 20, 2006, we sent respondent Watex a letter rejecting its previous case brief because it contained untimely new factual information. *See* Memorandum to the File From Scot Fullerton: *Porcelain–on-Steel Cooking Ware from the People's Republic of China: Revision of Watex Case Brief*, dated January 24, 2006. On January 24, 2006, the Department received the redacted version of Watex's case brief which no longer included the new factual information. *See Porcelain–on-Steel Cooking Ware from the People's Republic of China: Shanghai Watex Metal Products Co. Ltd.'s Revised Case Brief*, dated January 24, 2006 (''*Watex Case Brief*''). On January 25, 2006, we received petitioner's rebuttal brief. *See Pocelain–on-Steel Cooking Ware from the People's Republic of China: Petitioner's Rebuttal Brief*, dated January 25, 2006 (''*Petitioner's Rebuttal Brief*'').

On February 7, 2006, we held a public hearing in this review.

**Scope of Order**

The merchandise covered by this order is porcelain–on-steel cooking ware from the PRC, including tea kettles, which do not have self–contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 7323.94.00. The HTSUS subheading is provided for convenience and customs purposes. The written description of the scope remains dispositive.

**Separate Rates**

In the *Preliminary Results*, the Department determined that Watex had not established its eligibility for a separate rate. *See Preliminary Results*. Watex submitted a case brief arguing for a separate, company–specific rate. However, we have not received any information since the *Preliminary Results* which would warrant reconsideration of our separate–rates determination with respect to Watex.

**Analysis of Comments Received**

All issues raised in the briefs are addressed in the ''Issues and Decision Memorandum for the Final Results in the 2003/2004 Administrative Review of Porcelain–on-Steel Cooking Ware from the People's Republic of China from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration,'' dated April 21, 2006 (''*Issues and Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum on file in the Central Records Unit (''CRU''), room B–099 of the Herbert C. Hoover Building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

Based on the comments received from the interested parties, we have made no changes to the preliminary results. For the final results, we have adopted our positions in the preliminary results. We continue to find that Watex is not entitled to a separate, company–specific rate and that the application of total adverse facts available is warranted pursuant to sections 776(a)(2)(A), (C), and (D) and 776(b) of the Tariff Act of 1930, as amended (''the Act''). For a discussion, see the *Issues and Decision Memorandum* at Comments 1 & 2.

**Final Results of Review**

We determine that the following antidumping duty margin exists:

PORCELAIN–ON-STEEL COOKING WARE FROM THE PRC

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| PRC–wide Rate ..... | 66.65 |

**Assessment of Antidumping Duties**

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. We will instruct CBP to liquidate entries of the subject merchandise during the POR at the cash deposit in effect at the time of entry.

**Cash Deposits**

The following cash–deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the PRC, including Watex, the cash–deposit rate will be equal to 66.65 percent; (2) the cash–deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 66.65 percent; (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: April 19, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

**Appendix I**

*Comment 1:* Separate Rates
*Comment 2:* Application of Total Adverse Facts Available

[FR Doc. E6–6290 Filed 4–25–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–830]**

### Notice of Initiation of New Shipper Antidumping Duty Review: Stainless Steel Bar from Germany

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

**SUMMARY:** The Department of Commerce (''the Department'') has received a request for a new shipper review of the antidumping duty order on Stainless Steel Bar (''SSB'') from Germany published on March 7, 2002 (67 FR 10382). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d), we are initiating an antidumping new shipper review of Schmiedewerke Groditz GmbH (''SWG'').

**EFFECTIVE DATE:** April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander or Natalie Kempkey, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–1698, respectively.

**SUPPLEMENTARY INFORMATION:** The Department received a timely request from SWG, in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on SSB from Germany, which has a March anniversary month.

Pursuant to 19 CFR 351.214(b), SWG certified that it is both an exporter and producer of the subject merchandise, that it did not export subject merchandise to the United States during the period of investigation (''POI'') (October 1, 1999, through September 30, 2000), and that it was not affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. SWG also submitted documentation establishing the date on which the subject merchandise was first entered for consumption, the volume shipped, and the date of its first sale to an unaffiliated customer in the United States.

## Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

## Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on SSB from Germany (produced and exported) by SWG. Because we are initiating this new shipper review in the month immediately following the anniversary month, this review covers the period from March 1, 2005, through February 28, 2006, in accordance with 19 CFR 351.214(g)(1)(i)(A). We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act.

We will instruct U.S. Customs and Border Protection to suspend liquidation of any unliquidated entries of the subject merchandise from SWG and allow, at the option of the importer, the posting, until completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by SWG in accordance with 19 CFR 351.214(e). Because SWG certified that it both produces and exports the subject merchandise, the sale of which is the basis for this new shipper review request, we will permit the bonding privilege only for those entries of subject merchandise for which SWG is both the producer and the exporter.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: April 20, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–6285 Filed 4–25–06; 8:45 am]

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–475–820]**

## Stainless Steel Wire Rod from Italy: Notice of Final Results of Changed Circumstances Antidumping Duty Review

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

**SUMMARY:** On March 20, 2006, the Department of Commerce (the Department) published a notice of initiation and preliminary results of its changed circumstances review of the antidumping duty order on stainless steel wire rod (SSWR) from Italy. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Wire Rod from Italy*, 71 FR 13964 (Mar. 20, 2006) (*Preliminary Results*). We have now completed that review. For these final results, as in the *Preliminary Results*, we determine that: 1) Acciaierie Valbruna S.p.A. (Valbruna S.p.A.) is the successor–in-interest to Acciaierie Valbruna S.r.l. (Valbruna S.r.l.) and its subsidiary Acciaierie Bolzano S.p.A. (Bolzano S.p.A.), a respondent in the less–than-fair–value investigation; and 2) merchandise from Acciaierie Valbruna S.p.A. should be excluded from the antidumping duty order.

**EFFECTIVE DATE:** December 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 and (202) 482–0498, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 15, 1998, the Department published in the **Federal Register** (63 FR 49327) the antidumping duty order on SSWR from Italy. Valbruna S.r.l. and its affiliate Bolzano S.p.A. were excluded from the order because their dumping margin was *de minimis*. On January 26, 2006, Valbruna S.p.A. submitted a written request that the Department conduct a changed circumstances review in order to clarify for U.S. Customs and Border Protection (CBP) that Valbruna S.p.A. is the successor–in-interest to Valbruna S.r.l./Bolzano S.p.A. and that subject merchandise produced by this entity should not be subject to antidumping

duties. Valbruna S.p.A. requested that the result of the Department's changed circumstances review be retroactive to December 16, 1998, the effective date of Valbruna S.r.l.'s name and corporate change to Valbruna S.p.A.

On March 20, 2006, the Department published a notice of initiation and preliminary results of its changed circumstances review of the antidumping duty order on SSWR from Italy. *See Preliminary Results*. Interested parties were invited to comment on the preliminary results. No parties submitted comments.

**Scope of Order**

For purposes of this order, SSWR comprises products that are hot–rolled or hot–rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot–rolling or hot–rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire–drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the order. The chemical makeup for the excluded grades is as follows:

SF20T

| | | | |
|---|---|---|---|
| Carbon | 0.05max | Chromium | 19.00/21.00 |
| Manganese | 2.00 max | Molybdenum | 1.50/2.50 |
| Phosphorous | 0.05 max | Lead | added (0.10/0.30) |
| Sulfur | 0.15 max | Tellurium | added (0.03 min) |
| Silicon | 1.00 max | | |

K–M35FL

| | | | |
|---|---|---|---|
| Carbon | 0.015 max | Nickel | 0.30 max |
| Silicon | 0.70/1.00 | Chromium | 12.50/14.00 |
| Manganese | 0.40 max | Lead | 0.10/0.30 |
| Phosphorous | 0.04 max | Aluminum | 0.20/0.35 |
| Sulfur | 0.03 max | | |

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Final Results of Review**

Based on our analysis in the *Preliminary Results*, we find that Valbruna S.p.A. is the successor–in-interest to Valbruna S.r.l./Bolzano S.p.A. Based on evidence on the record, we find that Valbruna S.p.A.'s organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we find that Valbruna S.p.A. operates as the same business entity as Valbruna S.r.l./Bolzano S.p.A. Because Valbruna S.r.l./Bolzano S.p.A. was excluded from the antidumping duty order on SSWR from Italy, we will apply this determination retroactively and will instruct CBP to liquidate, without regard to antidumping duties, all unliquidated entries entered, or withdrawn from warehouse, for consumption on or after December 16, 1998, the date of Valbruna S.r.l.'s name change to Valbruna S.p.A, in accordance with past precedent. *See Certain Hot–Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Changed–Circumstances Antidumping and Countervailing Duty Administrative Review*, 64 FR 66880, 66881 (Nov. 30, 1999) (where the Department applied the changed circumstances determination retroactively because the company in question received a *de minimis* margin at the final determination and, thus, was never subject to the countervailing duty order).

**Notification**

This notice also serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 352.305(a)(3). Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: April 19, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–6289 Filed 4–25–06; 8:45 am]

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## DEPARTMENT OF COMMERCE.

### International Trade Administration

**[C–580–835]**

### Stainless Steel Sheet and Strip from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

**EFFECTIVE DATE:** April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Preeti Tolani, AD/CVD Operations,

Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0395.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

On September 28, 2005, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea covering the period of review January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 56631 (September 28, 2005). The preliminary results are currently due no later than May 3, 2006.

**Extension of Time Limit for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons. This review involves a company that has not been reviewed since the investigation and 16 government programs. Given the number of programs, which need to be thoroughly analyzed by the Department, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 110 days. Therefore, the preliminary results are now due no later than August 21, 2006. The final results continue to be due 120 days after publication of the preliminary results.This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: April 19, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–6291 Filed 4–25–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Environmental Technologies Trade Advisory Committee (ETTAC)

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of open meeting.

**DATES:** May 12, 2006.

*Time:* 9 a.m. to 4 p.m.

*Place:* Department of Commerce, 14th and Constitution NW., Washington, DC 20230, Room 3407.

**SUMMARY:** The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on May 12, 2006, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, in Room 3407. The ETTAC will discuss the Asia Pacific Partnership on Clean Development and Climate, updated negotiations in the World Trade Organization's environmental goods and services trade liberalization, the Chinese market for environmental technologies, and an update on the recent Asia Pacific Environmental Technologies Trade Mission, among other administrative committee priority items. The meeting is open to the public and time will be permitted for public comment.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2006.

For further information phone Ellen Bohon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–0359. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225.

Dated: April 20, 2006.

**Jerry Morse,**

*Acting Director, Office of Energy and Environmental Industries.*

[FR Doc. E6–6271 Filed 4–25–06; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Advanced Technology Program Advisory Committee

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST) will meet Tuesday, May 9, 2006 from 9 a.m. to 3 p.m. The Advanced Technology Program Advisory Committee is composed of ten members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

**DATES:** The meeting will convene Tuesday, May 9, at 9 a.m. and will adjourn at 3 p.m. on Tuesday, May 9, 2006.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Donna Paul no later than Friday, May 5, and she will provide you with instructions for admittance. Ms. Paul's email address is *donna.paul@nist.gov* and her phone number is 301/975–2162.

**FOR FURTHER INFORMATION CONTACT:** Donna Paul, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4700, telephone number (301) 975–2162.

**SUPPLEMENTARY INFORMATION:** The agenda will include presentations on Geographic Information System Approach for Identifying Emerging Technology Regions, U.S. Manufacturing Competitiveness in the Global Economy and Collaborations in ATP Projects. A discussion scheduled to begin at 1 p.m. and to end at 3 p.m. on May 9, 2006, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 21, 2006, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: April 21, 2006.

**William Jeffrey,**

*Director.*

[FR Doc. 06–3971 Filed 4–24–06; 9:26 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041906D]**

### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a request for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** This request for the continuation of an EFP involves the non-destructive collection of size frequency and population data on legal and sublegal lobsters as part of an ongoing research project to monitor the offshore lobster fishery in Lobster Management Area 3.

**DATES:** Comments on this lobster EFP notification for offshore lobster monitoring and data collection must be received on or before May 11, 2006.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments - Lobster EFP Proposal''. Comments also may be sent via facsimile (fax) to 978–281–9117. Comments on the Lobster EFP Proposal may be submitted by e-mail. The mailbox address for providing e-mail comments is *Lobster0206@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments - Lobster EFP Proposal''.

**FOR FURTHER INFORMATION CONTACT:** Bob Ross, Fishery Management Specialist, (978) 281–9234, fax (978)-281–9117.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

Continuation of this EFP, until April 30, 2007, would not involve the authorization of any additional trap gear in the area. A maximum of seven participating commercial fishing vessels will continue the non-destructive collection of detailed abundance and size frequency data on the composition of lobsters in four general offshore study areas in a collaborative effort with the Atlantic Offshore Lobstermen's Association (AOLA). Continuation of this EFP would authorize each participating commercial fishing vessel to continue to utilize one modified juvenile lobster collector trap to collect population data. The lobster trap modifications are to the escape vents, and trap entrance head. Therefore, this modified trap would impact its environment no differently than the regular lobster trap it replaces and will add no additional traps to the area. After data is collected on lobsters in the trap, all sub-legal lobsters will be immediately returned to the sea. The EFP waives the American lobster escape vent requirement specified at 50 CFR 697.21(c) for a maximum of one trap per vessel for a maximum of seven vessels in the program.

The Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS (Office Director) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Office Director has also made a preliminary determination that continuation of the activities authorized under the EFPs would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue EFPs. NMFS announces that the Office Director proposes to renew EFPs that would allow a maximum of seven vessels to conduct fishing operations involving the use of one juvenile lobster collector trap per vessel that are otherwise restricted by the regulations governing the American lobster fisheries of the Northeastern United States. Therefore, this document invites comments on the renewal of EFPs to allow a maximum of seven commercial fishing vessels to utilize a maximum of seven modified lobster traps and to collect statistical data using modified lobster trap gear.

The American lobster fishery is the most valuable fishery in the northeastern United States. In 2004, approximately 75 million pounds (34,169 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately 315 million dollars. American lobster experience very high fishing mortality rates throughout their range, from Canada to Cape Hatteras. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobster are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3, and compatible Federal regulations established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

To facilitate the development of effective management tools, extensive monitoring and detailed abundance and size frequency data on the composition

of lobsters throughout the range of the resource are necessary. The need for additional monitoring and detailed abundance and size frequency data on the offshore fishery, as proposed by this EFP, is critical due to the lack of consistent statistical coverage of the offshore lobster fishery. This proposed EFP will continue a project involved in extensive monitoring and detailed population information of American lobster in four offshore study areas using modified lobster trap gear that would otherwise be prohibited.

**Proposed EFP**

The proposed EFP is a continuation of a project begun in 2003, and is submitted by the AOLA and seven commercial lobster fishing vessels that are also members of the AOLA. The EFP proposes to collect statistical and scientific information on all lobsters retained in one juvenile lobster collector trap, as part of a project designed to monitor the offshore American lobster fishery to collect data that will assist the development of management practices appropriate to the fishery.

Each of seven commercial fishing vessels involved in this monitoring and data collection program would collect detailed abundance and size frequency data on the composition of all lobsters collected from one modified juvenile lobster trap in a string of approximately 40 lobster traps, including data on sub-legal, and egg bearing females in addition to legal lobsters. This EFP would not involve the authorization of any additional lobster trap gear in the area. Vessels would collect data from each of four general study areas: The Mid-Atlantic - Chesapeake 50 Fathom Edge; the Southern - Hudson Canyon Area; the Middle - Veatch Canyon Area; and the Northern - Georges Bank and Gulf of Maine Area. The participating vessels may retain on deck sub-legal lobsters, and egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting the required abundance and size frequency data specified by this project. Data collected would include size, sex, shell disease index, and the total number of legals, sub-legals, berried females, and v-notched females. All sub-legals, berried females, and v-notched female lobsters would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745 (b)(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

This EFP requests the inclusion of a maximum of one modified lobster trap per vessel, designated as a juvenile lobster collector trap, in the string of approximately 40 traps. This modified lobster trap would have a smaller entrance head, no escape vents and would be made of a smaller mesh than the traditional offshore trap to catch and retain a high percentage of juvenile lobsters in the 30–65 mm carapace length range. The smaller entrance head would exclude large lobsters from this trap and decrease the probability of cannibalism within the trap. The modifications to the trap are to the escape vents, and trap entrance head, not to the trap's size or configuration, therefore this modified trap would impact its environment no differently than the regular lobster trap it replaces. Renewal of this EFP will add no additional traps to the areas. Due to modifications to the escape vent, the EFP proposed to waive the American lobster escape vent requirement specified at 50 CFR 697.21(c) for a maximum of one trap per vessel for a maximum of seven vessels in the program. With the exception of the one modified juvenile lobster collector trap, all traps fished by a maximum of seven participating vessels would comply with all applicable lobster regulations specified at 50 CFR part 697.

All monitoring and data collection would be conducted by seven federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard the participating vessels.

This project, including the lobster handling protocols, was initially developed in consultation with NMFS and University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 21, 2006.

**James P. Burgess,**

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

[FR Doc. E6–6274 Filed 4–25–06; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 060313063-6104-02; I.D. 042006C]**

### Financial Assistance to Administer NOAA's Faculty and Student Intern Research Program and Notice of Availability of Funds and Solicitation for Proposals for These Funds; Extension of Application Deadline

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of Availability of Student Intern Research Program funding.

**SUMMARY:** NOAA publishes this notice to extend the solicitation period for proposals for NOAA's Faculty and Student Intern Research Program. Proposals are solicited from non-profit organizations who would design and provide administrative services, such as provide training, educational, and research opportunities to faculty, as well as graduate and undergraduate students pursuing degrees related to NOAA's mission. This solicitation was originally announced in the Federal Register on March 30, 2006. The solicitation period for this program was extended to provide the public more time to submit proposals.

**DATES:** Proposals must be received no later than 5 p.m., eastern daylight time, May 9, 2006.

**ADDRESSES:** It is strongly encouraged that applications submitted in response to this announcement are submitted through the *Grants.gov* Web site. Electronic access to the Full Funding Opportunity Announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov*. Applicants must comply with all requirements contained in the Full Funding Opportunity Announcement. Paper applications (a signed original and two copies) may also be submitted to the following address: NOAA Civil Rights Office/OFA51,1305 East West Highway, Room 12222, Silver Spring, MD 20910. No facsimile or electronic mail applications will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Victoria G. Dancy, NOAA Civil Rights Office/OFA51, 1305 East West Highway, Room 12222, Silver Spring, MD 20910, or by phone at (301) 713–0500, ext. 136.

**SUPPLEMENTARY INFORMATION:** On March 30, 2006, NOAA published a Notice of Availability of Funds and Solicitation for Proposals for these Funds for the NOAA Faculty and Student Intern

Research Program (71 FR 16125). NOAA publishes this notice to extend the solicitation period that was originally announced in the **Federal Register**. NOAA extends the solicitation period from April 26, 2006 to May 9, 2006 to provide the public more time to submit proposals. All other requirements for this solicitation remain the same.

**Funding Availability**

The Office of Civil Rights anticipates that funding will be available at $250,000 to $300,000 a year for a 3-year period. The proposal is limited to a total of $900,000 for a maximum of 3 years and one proposal will be funded. Up to 25 percent of $300,000 is allowed for administrative overhead and at least 75 percent of $300,000 is allocated for student support. It is anticipated that the funding instrument will be a cooperative agreement since NOAA will be substantially involved in identifying NOAA facilities to place students each year during the three-year period of internships, and with collaboration, participation, or intervention in project performance.

Authority : 15 U.S.C. 1540.

Catalog of Federal Domestic Assistance: 11.481

Eligibility: Proposals will only be accepted from not-for-profit organizations.

Cost Sharing Requirements: None

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

**Evaluation Criteria and Selection Procedures**

NOAA published its agency-wide solicitation entitled ≥Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2006≥ for projects for Fiscal Year 2006 in the **Federal Register** on June 30, 2005 (70 FR 37766). The evaluation criteria and selection procedures for projects contained in that omnibus notice are applicable to this solicitation. Copies of this notice are available on the Internet at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML*. Further details on evaluation and selection criteria can be found in the full funding opportunity announcement.

**Pre-award Activities**

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

**Limitation of Liability**

In no event will NOAA or the Department of Commerce accept responsibility for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

**National Environmental Policy Act (NEPA)**

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: (*http://www.nepa.noaa.gov/*), including our NOAA Administrative Order 216-6 for NEPA, *http://www.nepa.noaa.gov/NAO216__6__TOC.pdf*), and the Council on Environmental Quality implementation regulations, (*http://ceq.eh.doe.gov/nepa/regs/ceq/toc__ceq.htm*). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. In some cases if additional information is required after application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

**Pre-Award Notification Requirements for Grants and Cooperative Agreements**

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

**Paperwork Reduction Act (PRA)**

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046 and 0605–0001, respectively. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

**Executive Order 1286**

It has been determined that this notice is not significant for purposes of Executive Order 12866.

**Executive Order 13132 (Federalism)**

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

**Administrative Procedure Act/ Regulatory Flexibility Act**

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 21, 2006.

**William T. Hogarth,**

*Assistant Administrator, National Marine Fisheries Service.*

[FR Doc. E6–6277 Filed 4–25–06; 8:45 am]

BILLING CODE 3510–12–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041806A]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** NMFS will hold a meeting on a proposed cost recovery program for the Western Alaska Community Development Quota (CDQ) Program. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that the Secretary of Commerce establish a fee collection program for the recovery of the actual costs directly related to the management and enforcement of the CDQ Program. NMFS is seeking public input about the development of such a CDQ cost recovery program.

**DATES:** The meeting will be held on Thursday, May 18, 2006, from 9 a.m. to 12 p.m.

**ADDRESSES:** The meeting will be held in the Federal Building and Courthouse - Room 154, 222 West 7th Avenue, Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Sally Bibb, CDQ Program Manager, 907–586–7389 or *sally.bibb@noaa.gov*.

NMFS is developing a cost recovery program to implement requirements of Section 304(d) of the Magnuson-Stevens Act, which requires that the Secretary of Commerce establish a fee collection program for the recovery of the actual costs directly related to management and enforcement of individual fishing quota (IFQ) programs and CDQ programs. NMFS has already implemented cost recovery programs for the IFQ halibut, IFQ sablefish, and IFQ crab fisheries off Alaska. NMFS is developing an analysis in support of rulemaking to implement a cost recovery program for the fisheries managed under the CDQ Program.

The Magnuson-Stevens Act proscribes many non-discretionary elements of cost recovery programs, such as the types of costs that may be recovered from the fishing industry, when applicable fees may be collected, and the disposition of such fees once paid. However, there are still a number of discretionary elements associated with a CDQ cost recovery program. These include such elements as: which entities would be required to pay fees; the species that would be included in a cost recovery program; the basis for affected entities' fee liability; and, how to incorporate a provision to allow the State of Alaska to apply for reimbursement of its CDQ Program management costs, among others.

NMFS is conducting the May 18, 2006, meeting so that the public and participants in the CDQ Program may provide comments to NMFS on the development and implementation of the discretionary elements of the CDQ cost recovery program.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sally Bibb (see contact information) by May 10, 2006.

Dated: April 20, 2006.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E6–6273 Filed 4–25–06; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042006B]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in May, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, May 16, 2006 at 9 a.m. and Wednesday, May 17, 2006 at 8:30 a.m.

**ADDRESSES:** This meeting will be held at the Radisson Hotel, 180 Water Street, Plymouth, MA 02360: telephone: (508) 747–4900; fax: (508) 746–5386.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Committee will review input from both the Scallop and General Category Scallop Advisory Panels about alternatives to be considered in Amendment 11 to the Sea Scallop Fishery Management Plan (FMP). The Committee will then make final recommendations to forward to the full Council concerning the range of alternatives that should be considered in Amendment 11. The Committee may consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 21, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6–6241 Filed 4–25–06; 8:45 am]

**BILLING CODE 3510–22–S**

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## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice; Information Collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected

costs and burden; it includes the actual data collection instruments [if any].

**DATES:** Comments must be submitted on or before May 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gail B. Scott at CFTC, (202) 418–5139; FAX: (202) 418–5524; e-mail: *gscott@cftc.gov* and refer to OMB Control No. 3038–0043.

**SUPPLEMENTARY INFORMATION:**

*Title:* Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB Control No. 3038–0043. This is a request for extension of a currently approved information collection.

*Abstract:* 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

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 the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 8, 2006 (71 FR 6455).

*Burden statement:* The respondent burden for this collection is estimated to average .5 hours per response. This estimate 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; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 25.

*Estimated number of responses:* 51.3.

*Estimated total annual burden on respondents:* 25.6 hours.

*Frequency of collection:* On occasion.

Send comments regarding the burden estimated or nay other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0043 in any correspondence.

Gail B. Scott, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the CFTC, 725 17th Street, NW., Washington, DC 20503.

Dated: Issued in Washington, DC, on April 20, 2006.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 06–3925 Filed 4–25–06; 8:45 am]

**BILLING CODE 6351–01–M**

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Flammability Standards for Children's Sleepwear

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of January 25, 2006, 71 FR 4118, the Consumer Product Safety Commission (CPSC) or Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of collections of information in the flammability standards for children's sleepwear and implementing regulations. Two comments were received in response to that notice. One comment supported the proposed extension of information collection for children's sleepwear. One comment stated that over-the-counter samples should be tested and that the collection of information should be computerized and violations reported. Currently, the standard is enforced through the inspection of establishments manufacturing sleepwear, through retail surveillance and by follow-up to consumer and trade complaints. During these inspections, randomly selected samples are tested and samples required to be maintained by the standard, as well as record keeping that is required by the standard, are examined. Information regarding violations of the standard are available on the recall section of the CPSC Web site at *http://www.cpsc.gov.*

Accordingly, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of the collections of information for three years from the date of approval.

The standards and regulations are codified as the Flammability Standard for Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; and the Flammability Standard for Children's Sleepwear: Sizes 7 Through 14, 16 CFR part 1616. The flammability standards and implementing regulations prescribe requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear subject to the standards. The information in the records required by the regulations allows the Commission to determine if items of children's sleepwear comply with the applicable standard. This information also enables the Commission to obtain corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner which creates a substantial risk of injury.

### Additional Information About the Request for Reinstatement of Approval of Collections of Information

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR part 1616.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers and importers of children's sleepwear in sizes 0 through 14.

*Estimated number of respondents:* 53.

*Estimated average number of hours per respondent:* 2,000 per year.

*Estimated number of hours for all respondents:* 318,000 per year.

*Estimated cost of collection for all respondents:* $9,142,500 per year.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by May 26, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the

Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be sent to the Consumer Product Safety Commission, Office of the Secretary by e-mail at *cpsc-os@cpsc.gov* or facsimile at (301) 504–0127.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: April 20, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E6–6269 Filed 4–25–06; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Collection; Comment Request—Citizens Band Base Station Antennas

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

**DATES:** The Office of the Secretary must receive comments not later than June 26, 2006.

**ADDRESSES:** Written comments should be captioned ''Citizens Band Base Station Antennas'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1204, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7671.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Antennas (16 CFR part 1204) to reduce risks of death and serious injury that may result if an omnidirectional antenna contacts an overhead power line while being erected or removed from its site. The standard contains performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR part 1204, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of antennas subject to the standard to help protect the public from risks of injury or death associated with omnidirectional citizens band base station antennas. More specifically, this information helps the Commission determine that antennas subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if omnidirectional citizens band base station antennas fail to comply with the standard in a manner which creates a substantial risk of injury to the public. The Office of Management and Budget approved the collection of information in the certification regulations under control number 3041–0006. OMB's most recent extension of approval expires on July 31, 2006. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

### B. Estimated Burden

The Commission staff estimates that about 5 firms manufacture or import citizens band base station antennas subject to the standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens band base station antennas is approximately 1,100 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $42.84 (Bureau of Labor Statistics, 2006), for an estimated annual cost to the industry of $47,000.

### C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 20, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E6–6270 Filed 4–25–06; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Collection of Information; Comment Request—Safety Standard for Cigarette Lighters

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Cigarette Lighters (16 CFR part 1210). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

**DATES:** The Office of the Secretary must receive written comments not later than June 26, 2006.

**ADDRESSES:** Written comments should be captioned ''Cigarette Lighters'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1210, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7671.

**SUPPLEMENTARY INFORMATION:** In 1993, the Commission issued the Safety Standard for Cigarette Lighters (16 CFR part 1210) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard contains performance requirements for disposable and novelty lighters that are intended to make cigarette lighters subject to the standard resist operation by children younger than five years of age.

## A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for cigarette lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of surrogate qualification tests for compliance with the standard, and other information before the introduction of each model of lighter in commerce. These regulations also require manufacturers, importers, and private labelers of disposable and novelty lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR part 1210, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of disposable and novelty lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations for cigarette lighters under control number 3041–0116. OMB's most recent extension of approval will expire on June 30, 2006. The Commission proposes to request an extension of approval for these collection of information requirements.

## B. Estimated Burden

The cost of the rule's testing requirement is the cost of testing, either by the firm or by outside contractors. There are an estimated 60 firms that may be affected. If done through outside contractors, the cost per test has been estimated at $15,000 to $25,000 on average. Each firm is expected to test 2 models per year. Thus, for the 60 affected firms, the cost of outside testing would be $2.4 million. If tests are conducted in-house, testing 2 new models is expected to take 175 hours per firm. The total testing time for all 60 firms, if conducted in-house, would be approximately 10,500. Based on the average hourly total compensation (wages and benefits) for U.S. technical workers of $42.84 (Bureau of Labor Statistics, September, 2005), the total industry cost of the testing component for this regulation would be in the range of $450,000 to $2.4 million per year, depending on the method chosen.

The cost of the recordkeeping requirements has two separate components: Recordkeeping for new models and recordkeeping for comparable models. The time consumed in recordkeeping for new models has been estimated at 20 hours per model. Thus the total time consumed for recordkeeping of new models would be 2,400 hours (20 hours × 2 models × 60 firms). Based on the average hourly compensation for technical workers, the cost of recordkeeping for new models would be about $100,000 annually (2,400 × 42.84).

Time consumed in recordkeeping for lighters that are submitted for comparison to previously tested models will require approximately 3 hours for each model. Based on recent submission, each firm is expected to submit 35 models each year for comparison. Thus, an estimated 6,300 hours may be required by the 60 firms for recordkeeping regarding comparison lighters (35 models × 60 firms × 3 hours). Based on the average hourly compensation for technical workers, the cost of recordkeeping would be about $270,000 (6,300 hours × $42.84). The total recordkeeping costs associated with the lighter regulation would be approximately $370,000 ($100,000 + $270,000).

In addition, each firm will submit information to the CPSC regarding the new testing and comparison submissions totaling about 2,200 responses per year (2 models tested + 35 comparison models × 60 firms). The total number of hours for these responses would be approximately 19,200 per year including new-product testing (175 hours × 60 firms = 10,500), new product recordkeeping (40 hours × 60 firms = 2,400), and recordkeeping for comparison lighters (35 models × 3 hours × 60 firms = 6,300). Based on the average hourly compensation for

technical workers, the total cost of preparing these submissions would be about $823,000 (19,200 hours × $42.84).

**C. Request for Comments**

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 21, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E6–6297 Filed 4–25–06; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Request Comments on Alternative Procedures To Implement Advisory Council on Historic Preservation Program Act (NHPA) Section 106, Per 36 CFR 800.14(E) for Disposal of Naval Vessels

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of intent to request comments on implementing alternative procedures.

**SUMMARY:** The Department of the Navy (Navy) is requesting ''Program Comments'' for alternative procedures to implement the National Historic Preservation Act (NHPA) Section 106 regulations. This programmatic approach substitutes all of 36 CFR part 800 subpart B, covers a category of undertakings in lieu of individual reviews and demonstrates the Navy's compliance with its responsibilities under Section 106 of NHPA regarding the disposal of U.S. Naval vessels which have been stricken from the Naval Vessel Register (NVR) and are owned and under the physical custody of the Navy.

This document will remain in effect indefinitely. In accordance with 36 CFR 800.14(e)(6), if the Advisory Council for Historic Preservation (ACHP) determines that the consideration of NRHP eligible vessels are not being carried out in a manner consistent with this document, the ACHP may withdraw the comment and the Navy would be required to comply with the requirements of 36 CFR 800.3 through 88.7 for each adverse action.

**DATES:** Submit comments on or before May 20, 2006.

**ADDRESSES:** You may submit comments, identified by any of the following methods: E-Mail at *Roderick.Speer@navy.mil,* fax at 202–781–4721, or mail to: Navy Inactive Ships Program Office, 1333 Isaac Hull Avenue, SE, Washington, DC 20376.

**FOR FURTHER INFORMATION CONTACT:** Commander, Program Executive Office Ships (PEO SHIPS), PMS333, Inactive Ship Program Office, Ship Donation Program, ATTN: Mr. Roderick Speer, 1333 Isaac Hull Avenue SE., Stop 2701, Washington Navy Yard, DC 20376–2701, telephone 202–781–0876.

**SUPPLEMENTARY INFORMATION:** It is neither cost effective nor consistent with the Navy's mission to retain vessels once they have been stricken from the NVR by the Secretary of the Navy and authorized for disposal. Ship disposal actions include: Foreign Military Sales (FMS) to an allied country, title transfer to another federal agency, donation to a U.S. nonprofit organization or state or local government entity for public display as a museum and/or memorial, transfer to the U.S. Fleet for sinking as a target during at-sea live-fire training exercises, transfer to a state for sinking as an artificial reef, or for dismantling and recycling.

Vessel donations for public display as a museum or memorial and title transfers to another federal agency are not considered adverse effects subject to this document. Foreign Military Sales to an allied country, transfer to the U.S. Fleet for sinking as a target during at-sea live-fire training exercises, transfer to a state for sinking as an artificial reef, or dismantling and recycling are considered adverse effects subject to this document.

Prior to undertaking an adverse effect described above, vessels shall be reviewed by the Naval Historical Center (NHC) for eligibility for listing in the National Register of Historic Places (NRHP). Vessels determined to be eligible for listing in the NRHP shall be subject to the provisions of this document prior to undertaking an adverse effect.

Vessels included in this program include those (ships and service craft) entered in the NVR with the following exceptions:

a. Active vessels in commission or in service.

b. Vessels that have already been disposed of or lost by whatever cause, and determined to be unsalvageable.

c. Vessels retained in Navy custody for public display. *i.e.*, USS CONSTITUTION, Historic Ship NAUTILUS (SSN 571), or ex-BARRY (DD 933), which will continue to be managed individually.

d. Vessels retained by the Navy for experimental purposes on a not-to-sink basis.

e. Vessels retained by the Navy for possible remobilization (Mobilization B).

f. Leased or chartered vessels not owned by the Navy, even if listed on the NVR.

g. Non-self-propelled service craft and boats (boats are not on the NVR).

Vessels that have already been determined to be eligible for listing in the NRHP by a process separate from this process and that are not the subject of an existing agreement established during the Section 106 consultation process will be subject to the provisions of this document as though their eligibility had been established as a result of this program. Vessels that are subject of an existing Section 106 agreement will continue to be subject to the existing agreement.

The following criteria will be used to determine whether vessels are considered eligible for listing in the NRHP:

a. Vessels that have been awarded an individual Presidential Unit Citation (granted to military units which have performed an extremely meritorious or heroic act, usually in the face of an armed enemy).

b. Vessels aboard which an individual act of heroism took place such that the individual was subsequently awarded the Medal of Honor (for valor in action against an enemy force) or the Navy Cross (for extraordinary heroism in action not justifying an award of the Medal of Honor).

c. Vessels to which a President of the United States was assigned during his or her naval service.

d. The first vessel to incorporate weapon system, engineering, or other upgrades that represent a revolutionary change in naval design or war-fighting capabilities, or other special and unique considerations.

In June of each year, the Chief of Naval Operations (CNO) undertakes a Ship Disposition Review (SDR) to determine which vessels shall be decommissioned from active service; the total each year has been averaging eight vessels. This list will be published by Naval Sea Systems Command (NAVSEASYSCOM) in the **Federal Register** two months after the Review, and will include the determination reached in coordination with the NHC as to which, if any, of the vessels are eligible for listing in the NRHP. During the public notice period, which shall extend sixty days from the time of publication, any member of the public may provide comments and justification to support or contradict the Navy's determinations regarding each named vessel. NAVSEASYSCOM, coordinating with the NHC, shall consider all recommendations and supporting justification received from the public in accordance with the criteria defined above before action is taken to dispose of the vessel.

The NHC shall provide final determination of eligibility of Navy vessels in accordance with the foregoing criteria. The inactive vessels inventory will be reviewed in preparation for the annual CNO, SDR conference. Vessels previously reviewed for eligibility do not require rereview unless a triggering event occurred related to the eligibility criteria.

The Navy's military mission requires that eligible vessels not stricken from the NVR continue to be fully available for naval service appropriate to each vessel's mission, including both routine and combat operations, and that they also continue to be available for modernization as necessary to keep them battle-worthy, safe, and habitable. Specifically, the Navy will employ, deploy, activate, inactivate, decommission, modify, and move such vessels without regard to their eligibility and without consultation under NHPA. The Navy's responsibilities with regard to eligible vessels are limited to the provisions of this section.

The Navy will take the following steps, (if security classification permits), regarding vessels determined to be eligible for listing in the NRHP:

a. Upon decommissioning or upon designation as eligible:

(1) Annotate the vessel's NVR entry to reflect eligibility.

(2) Unless the vessel is designated Foreign Military Sales (FMS) transfer, there are other Navy requirements for its continued use, or national security or other restrictions preclude donation, make the vessel available for donation under 10 U.S.C. 7306. The Navy's Ship Donation Program (so-named, because service craft are only rarely eligible or requested for donation) is described at *http://www.navsea.navy.mil/ndp.* Donation applications requirements include submission of acceptable curatorial/museum and maintenance plans among other plans for the preservation of the vessel in a condition satisfactory to the Secretary of the Navy. If a qualified donee is not identified within two years, the Navy may proceed with other disposal options.

(3) Vessels designated by the Office of the CNO for Foreign Military Sales transfer will not be made available for donation under 10 U.S.C. 7306 as Department of Defense and Department of State Security Assistance programs have a higher national priority. Such FMS transfers may occur immediately upon decommissioning from the Navy (hot-ship transfer) or may occur several years after decommissioning (cold-ship transfer). However, if NRHP eligible vessels are removed from FMS hold and designated for disposal, they will be made available for donation under 10 U.S.C. 7306 according to the preceding provision.

b. After NRHP eligible ships have been re-designated from donation hold status to disposal, and with the exception of classified information:

(1) The NHC, Ships History Branch will give priority to compiling histories of NRHP eligible vessels when preparing entries in the Dictionary of American Naval Fighting Ships.

(2) The NHC, Ships History Branch will permanently retain and provide public access to appropriate documentation from NRHP eligible vessels such as command history reports and war diaries.

(3) The NHC, Ships History Branch, will provide public access to ship deck logs under its possession. Deck logs that are more than 30 years old are transferred to the National Archives and Records Administration for permanent retention.

(4) Navy policy requires the removal of curator artifacts from all vessels being decommissioned; including citations, correspondence of significant historical value, ship histories, paintings, and photographs selected to best display the physical characteristics of the vessel (ship's silver services are retained by the Naval Supply System). The NHC, Curator Branch, will maintain these items and will consider the loan of previously removed curator artifacts or other items of potential historical importance to qualified U.S. nonprofit organizations.

(5) Within three years of designation for disposal of an NRHP eligible vessel, the Navy Inactive Ships Program Office (NISPO) will deposit with the National Archives a documentation package consisting of archivally stable media of the following items: Unclassified Booklet of General Plans and the last unclassified report of the Board of Inspection and Survey describing the material condition of the vessel.

The NISPO will submit an annual report to the Advisory ACHP on the progress of the program. The report will include the following information:

a. Names and status of vessels identified as eligible for NRHP listing.

b. Names of eligible vessels disposed of during the reporting period along with the status of documentation packages of eligible vessels that have been disposed of.

By following this document, the Navy meets its responsibilities for compliance under Section 106 concerning management of its entire inventory of inactive vessels. Accordingly, the Navy is no longer required to follow the case-by-case Section 106 review process for each individual management action affecting inactive vessels, nor to conduct consultations with the ACHP, State Historic Preservation Officer, and other preservation authorities, except as provided in this program.

The Navy may carry out management actions prior to the completion of the provisions outlined above, so long as such management actions do not preclude the eventual successful completion of these provisions.

Dated: April 20, 2006.

**Eric Mcdonald,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E6–6248 Filed 4–25–06; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 26, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of

Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 20, 2006.

**Jeanne Van Vlandren,**

*Director, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Extension.

*Title:* Federal Perkins/NDSL Loan Assignment Form.

*Frequency:* On Occasion.

*Affected Public:* Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 21,262. Burden Hours: 8,505.

*Abstract:* This form is used to collect pertinent data regarding student loans from institutions participating in the Federal Perkins Loan Program. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal government.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2992. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to IC *DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to IC *DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–6242 Filed 4–25–06; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 26, 2006.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 19, 2006.

**Jeanne Van Vlandren,**

*Director, Regulatory Information Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* Revision.

*Title:* Evaluation of Math Curricula.

*Frequency:* Semi-Annually.

*Affected Public:* Not-for-profit institutions; Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,512.

*Burden Hours:* 648.

*Abstract:* The Evaluation of Math Curricula will assess the effectiveness of up to five early elementary math curricula. This submission is the second phase of the study and includes the justification and plan for the collection of information statistical methods for the evaluation and mathematics curricula. Data collection forms that will be used in the study are included in this submission. (The identification and recruitment phase was cleared in a previous OMB submission.)

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3067. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to IC *DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to the e-mail address IC *DocketMgr@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–6243 Filed 4–25–06; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Director, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 26, 2006.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 19, 2006.

**Jeanne Van Vlandren,**

*Director, Regulatory Information Management Services, Office of Management.*

### Office of Planning, Evaluation and Policy Development

*Type of Review:* New.

*Title:* Data Collection for the Evaluation of the Improving Literacy Through School Libraries Program.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 800.

*Burden Hours:* 600.

*Abstract:* This submission requests approval for an evaluation of the Improving Literacy through School Libraries Program (LSL). LSL, established under the No Child Left Behind Act of 2001 (NCLB), is designed to improve the literacy skills and academic achievement of students by providing them with access to up-to-date school library materials, technologically advanced school library media centers, and professionally certified school library media specialists. The evaluation of this program is authorized by NCLB Title I, Part B, Subpart 4.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3066. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to IC *DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to IC *DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–6244 Filed 4–25–06; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education; Overview Information; Smaller Learning Communities Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2005 Funds

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.215L.

*Dates:*

Applications Available: April 26, 2006.

Deadline for Notice of Intent to Apply: May 26, 2006.

Deadline for Transmittal of Applications: June 26, 2006.

Deadline for Intergovernmental Review: August 24, 2006.

*Eligible Applicants:* Local educational agencies (LEAs), including educational service agencies and schools funded by the Bureau of Indian Affairs (BIA), applying on behalf of large public high schools, are eligible to apply for a grant.

Additional eligibility requirements are listed elsewhere in this notice under section III. Eligibility Information.

*Estimated Available Funds:* $86,954,000. The Department assumes that funds will be sufficient to provide the first 3 years of funding (36 months) for each grantee from funds available for this compeition. Funding to cover the remaining 24 months will be contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application. Contingent upon the availability of funds and quality of applications, we may make additional awards in a subsequent fiscal year, using FY 2006 funds, based on the list of unfunded applicants from this competition. Additional information regarding awards and budgets is provided elsewhere in this notice under section II. Award Information.

*Estimated Range of Awards:* See section II. Award Information, elsewhere in this notice.

*Estimated Size of Award:* See section II. Award Information, elsewhere in this notice.

*Maximum Award:* See section II. Award Information, elsewhere in this notice.

*Estimated Number of Awards:* 72.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* Authorized under title V, part D, subpart 4, section

5441 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the purpose of the Smaller Learning Communities (SLC) program is to promote academic achievement through the creation or expansion of small, safe, and successful learning environments in large public high schools to help ensure that all students graduate with the knowledge and skills necessary to make successful transitions to college and careers.

*Priority:* This priority is from the notice of final priority, requirements, definitions, and selection criteria (NFP) for this program, published in the **Federal Register** on April 28, 2005 (70 FR 22233).

*Absolute Priority:* For this competition and any subsequent year in which we make awards based on the list of unfunded applicants 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:

*Helping All Students to Succeed in Rigorous Academic Courses.*

This priority supports projects to create or expand SLCs that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts and mathematics skills that are significantly below grade level ''catch up'' quickly so that, by no later than the end of the 10th grade, they have acquired the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, apprenticeships, or advanced training.

These accelerated learning strategies and interventions must—

(1) Be grounded in the findings of scientifically based and other rigorous research;

(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

*Application Requirements*

In the NFP, published in the **Federal Register** on April 28, 2005 (70 FR 22233), we established application requirements in the following areas for competitions conducted under this program: Eligibility; School Report Cards; Types of Grants; Consortium Applications and Educational Service Agencies; Student Placement; Including All Students; Budget Information for Determination of Award; Performance Indicators; Evaluation; High-Risk Status and Other Enforcement Mechanisms; Required Meetings Sponsored by the Department; and Previous Grantees.

These requirements are in addition to the content that all SLC grant applicants must include in their applications as required by the program statute in title V, part D, subpart 4, section 5441(b) of the ESEA.

In this competition, we will not be using the Types of Grants requirement. We have incorporated the terms of the remaining requirements under appropriate sections of this notice (*e.g.*, the Eligibility requirement is listed in section III. Eligibility Information, elsewhere in this notice).

*Definitions*

In addition to the definitions in the authorizing statute and 34 CFR 77.1, the following definitions also apply to this program:

*BIA School* means a school operated or supported by the Bureau of Indian Affairs.

*Large High School* means a public school that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

*Smaller Learning Community (SLC)* means an environment in which a core group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed.

**Program Authority:** 20 U.S.C. 7249.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The NFP published in the **Federal Register** on April 28, 2005 (70 FR 22233).

**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:* $86,954,000. The Department assumes that funds will be sufficient to provide the first 3 years of funding (36 months) for each grantee from funds available for this compeition. Funding to cover the remaining 24 months will be contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application. Contingent upon the availability of funds and quality of applications, we may make additional awards in a subsequent year, using FY 2006 funds, based on the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $650,000 to $11,750,000. The following chart provides the ranges of awards per high school size for 60-month SLC grants:

SLC GRANT AWARD RANGES

| Student enrollment | Award ranges per school |
|---|---|
| 1,000–2,000 Students | $650,000–$800,000 |
| 2,001–3,000 Students | 650,000–925,000 |
| 3,001–4,000 Students | 650,000–1,050,000 |
| 4,001 and Up ..... | 650,000–1,175,000 |

*Estimated Size of Award:* LEAs may receive, on behalf of a single school, up to $1,175,000, depending upon the size of the school. This award is for the full 60-month project period. LEAs applying on behalf of a group of eligible schools could receive up to $11,750,000 per grant. To ensure that sufficient funds are available to support SLC activities, LEAs may not include more than 10 schools in a single application for a grant. The actual size of awards will be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed project and the range of awards indicated in the application.

*Maximum Award:* Applications that request more funds than the maximum amounts specified (in the chart) for any school or for the total grant will not be read as part of the regular application process. However, if, after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary may choose to read those additional applications that requested funds exceeding the maximum amounts specified. If the Secretary chooses to fund any of those additional applications, applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

*Estimated Number of Awards:* 72.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* Local educational agencies (LEAs), including educational service agencies and schools funded by the Bureau of Indian Affairs (BIA), applying on behalf of large public high schools, are eligible to apply for a grant.

An LEA that was awarded an implementation grant on behalf of a school under the original SLC program competition held in 2000 (Cohort 1), under the second competition held in 2002 (Cohort 2), or under the third competition held in 2003 (Cohort 3) may apply on behalf of the school for a second SLC grant under the terms contained in the NFP. LEAs would not be able to apply for funding on behalf of schools that received an SLC implementation grant under the competitions held in 2004 (Cohort 4) and 2005 (Cohort 5).

To be considered for funding, LEAs must identify in their applications the name or names of the eligible large high school or schools and the number of students enrolled in each school. A large high school is defined as one having grades 11 and 12, with 1,000 or more students enrolled in grades 9 and above. Enrollment figures must be based upon data from the current school year or data from the most recently completed school year. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. LEAs may apply on behalf of no more than 10 schools.

In an effort to encourage systemic, district-level reform efforts, we permit an individual LEA to submit only one grant application in a competition, specifying in each application which high schools the LEA intends to fund.

In addition, we require that an LEA applying for a grant under this competition apply only on behalf of a high school or high schools for which it has governing authority, unless the LEA is an educational service agency that includes in its application evidence that the entity that has governing authority over the eligible high school supports the application. An LEA, however, may form a consortium with another LEA and submit a joint application for funds. The consortium must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 in EDGAR.

An LEA is eligible for only one grant whether the LEA applies independently or as part of a consortium.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

**IV. Application and Submission Information**

1. *Address To Request Application Package:* You may obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet use the following addresses: *http://www.grants.gov* or *http://www.ed.gov/programs/slcp/applicant.html*. To obtain a copy from ED Pubs, write or call the following: 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 84.215L.

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 Deborah Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W241, Washington, DC 20202–6200. Telephone: (202) 205–3783 or by e-mail: *deborah.williams@ed.gov*.

2. *Content and Form of Application Submission:* All SLC grant applicants must include in their applications the information required by the program statute in title V, part D, subpart 4, section 5441(b) of the ESEA. Applicants also must meet the following requirements:

(a) *School Report Cards*. We require that LEAs provide, for each school included in the application, the most recent ''report card'' produced by the State or the LEA to inform the public about the characteristics of the school and its students, including information about student academic achievement and other student outcomes. These ''report cards'' must include, at a minimum, the following information that LEAs are required to report for each school under section 1111(h)(2)(B)(ii) of the ESEA: (1) Whether the school has been identified for school improvement; and (2) information that shows how the academic assessments and other indicators of adequate yearly progress compare to those indicators for students in the LEA as a whole and also shows the performance of the school's students on statewide assessments.

(b) *Student Placement*. We require applicants for SLC grants to include a description of how students will be selected or placed in an SLC and an assurance that students will not be placed according to ability or any other measure, but will be placed at random or by student/parent choice and not pursuant to testing or other judgments.

(c) *Including All Students*. We require applicants for grants to create or expand an SLC project that will include every student within the school by no later than the end of the fifth school year of implementation. Elsewhere in this notice, we define an SLC as an environment in which a group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed.

(d) *Performance Indicators*. We require applicants to identify in their application specific performance indicators and annual performance objectives for each of these indicators. Specifically, we require applicants to use the following performance indicators to measure the progress of each school:

(1) The percentage of students who score at the proficient and advanced levels on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by subject matter and the following subgroups:

(A) Major racial and ethnic groups.

(B) Students with disabilities.

(C) Students with limited English proficiency.

(D) Economically disadvantaged students.

(2) The school's graduation rate, as defined in the State's approved accountability plan for part A of title I of the ESEA.

(3) The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training for the semester following graduation.

(4) The percentage of graduates who are employed by the end of the first quarter after they graduate (*e.g.*, for students who graduate in May or June, this would be September 30).

(5) Other appropriate indicators the LEA may choose to identify in its application, such as rates of average daily attendance and year-to-year retention; achievement and gains in English proficiency of limited English

proficient students; the incidence of school violence, drug and alcohol use, and disciplinary actions; or the percentage of students completing advanced placement courses and the rate of passing advanced placement tests (such as Advanced Placement and International Baccalaureate) and courses for college credit.

Applicants are required to include in their applications baseline data for each of these indicators and identify performance objectives for each year of the project period. We further require recipients of grants to report annually on the extent to which each school achieves its performance objectives for each indicator during the preceding school year. We require grantees to report comparable data, if available, for the preceding three school years so that trends in performance will be more apparent.

Grantees must submit this additional data using the Department's SLC electronic reporting Web site within three months after awards are made.

(e) *Evaluation.* We require each applicant to provide assurances that it will support an evaluation of the project that provides information to the project director and school personnel, and that will be useful in gauging the project's progress and in identifying areas for improvement. Each evaluation must include an annual report for each of the first four years of the project period and a final report that would be completed at the end of the fifth year of implementation and that will include information on implementation during the fifth year as well as information on the implementation of the project across the entire project period. We require grantees to submit each of these reports to the Department.

In addition, we require that the evaluation be conducted by an independent third party, selected by the applicant, whose role in the project is limited to conducting the evaluation.

(f) *Required Meetings Sponsored by the Department.* Applicants must set aside adequate funds within their proposed budget to send their project director to a two-day project directors' meeting in Washington, DC, and to send a team of five key staff members, including their external evaluator, to attend a two-and-a-half-day Regional Institute. The Department will host both meetings. We anticipate that the meetings will be held in the first year of the grant period.

(g) *Additional Requirements.* Additional requirements concerning the content of an application for this program, together with the forms you must submit, also are in the application package for this competition.

Page limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We encourage you to limit the narrative to the equivalent of no more than 25 pages and suggest that you use the following standards:

- A ''page'' is 8.5 x 11, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to the forms, budget section, budget justification, assurances and certifications, one-page abstract, endnotes, school report cards, or resumes. However, you must include all of the application narrative in the narrative section.

3. *Submission Dates and Times:*

Applications Available: April 26, 2006.

Deadline for Notice of Intent to Apply: May 26, 2006.

Deadline for Transmittal of Applications: June 26, 2006.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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.

Deadline for Intergovernmental Review: August 24, 2006.

4. *Intergovernmental Review:* This competition 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:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Smaller Learning Communities Program-CFDA Number 84.215L must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirements *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Smaller Learning Communities Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number s alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/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/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/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (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/assets/GrantsgovCoBrandBrochure8X11.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 an application successfully via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. 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 above 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 an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include 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 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 as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the 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 (if available). 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:** Extensions referred to 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 deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Deborah Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W241, Washington, DC 20202–6200. Fax: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215L), 400 Maryland Avenue, SW., Washington, DC 20202–4260,

or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Cente—Stop 4260, Attention: (CFDA Number 84.215L), 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, or

(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, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215L), 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 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment 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

*Selection Criteria:* The following selection criteria will be used to evaluate applications for new grants under this program. These selection criteria are from the NFP, published in the **Federal Register** on April 28, 2005 (70 FR 22233).

**Note:** The maximum score for a grant under this program is 100 points. The points or weights assigned to each criterion and sub-criterion are indicated in parentheses.

*Need for the Project (10 Points)*

In determining the need for the proposed project, we consider the extent to which the applicant will—

Assist schools that have the greatest need for assistance, as indicated by, relative to other high schools within the State, one or more of the factors below:

(A) Student performance on the academic assessments in reading/language arts and mathematics administered by the State under part A, title I of the ESEA, including gaps in the performance of all students and that of student subgroups, such as economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, or students with limited English proficiency.

(B) The school's dropout rate and gaps in the graduation rate between all students and student subgroups.

(C) Disciplinary actions.

(D) The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training in the semester following graduation, and gaps between all students and student subgroups.

*Foundation for Implementation (20 Points)*

In determining the quality of the implementation plan for the proposed project, we consider the extent to which—

(1) (5 points) Teachers and administrators within each school support the proposed project and have been and will continue to be involved in its planning and development, including, particularly, those teachers who will be directly affected by the proposed project;

(2) (5 points) Parents, students, and other community stakeholders support the proposed project and have been and will continue to be involved in its planning and development;

(3) (5 points) The proposed project is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement between all students and student subgroups; and

(4) (5 points) The applicant demonstrates that it has carried out sufficient planning and preparatory activities to enable it to begin to implement the proposed project at the beginning of the school year immediately following receipt of an award.

*Quality of the Project Design (30 Points)*

In determining the quality of the project design for the SLC project, we consider the extent to which—

(1) (5 points) The applicant will implement or expand strategies, new organizational structures, or other changes in practice that are likely to create an environment in which a core group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed;

(2) (5 points) The applicant proposes research-based strategies that are likely to improve overall student achievement and other outcomes (including graduation rates and enrollment in postsecondary education), narrow any gaps in achievement between all students and student subgroups, and address the particular needs identified by the school under the paragraph titled *Need for the Project,* such as—

(A) More rigorous academic curriculum for all students and the provision of academic support to struggling students who need assistance to master more challenging academic content;

(B) More intensive and individualized educational counseling and career and college guidance, provided through mentoring, teacher advisories, adult advocates, or other means;

(C) Strategies designed to increase average daily attendance, increase the percentage of students who transition from the 9th to 10th grade, and improve the graduation rate; and

(D) Expanding opportunities for students to participate in advanced placement courses and other academic and technical courses that offer both high school and postsecondary credit;

(3) (5 points) The applicant will implement accelerated learning strategies and interventions that will assist students who enter the school with reading/language or mathematics skills that are significantly below grade level and that—

(A) Are designed to equip participating students with grade-level reading/language arts and mathematics skills by no later than the end of the 10th grade;

(B) Are grounded in scientifically based research;

(C) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(D) Provide additional instructional and academic support during the regular school day, which may be

supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session;

(E) Will be delivered with sufficient intensity to improve the reading/language arts or math skills, as appropriate, of participating students; and

(F) Include sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction;

(4) (5 points) The applicant will provide high-quality professional development throughout the project period that advances the understanding of teachers, administrators, and other school staff of effective, research-based instructional strategies for improving the academic achievement of students, including, particularly, students with academic skills that are significantly below grade level, and provide the knowledge and skills those staff need to participate effectively in the development, expansion, or implementation of an SLC;

(5) (5 points) The proposed project fits into a comprehensive district high school improvement strategy to increase the academic achievement of all district high school students, reduce gaps between the achievement of all students and student subgroups, and prepare students to enter postsecondary education or the workforce; and

(6) (5 points) The proposed project is part of a cohesive plan that uses funds provided under the ESEA, the Carl D. Perkins Vocational and Technical Education Act, or other Federal programs, as well as local, State, and private funds sufficient to ensure continuation of efforts after Federal support ends.

*Quality of the Management Plan (20 Points)*

In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) (5 points) The adequacy of the proposed management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks.

(2) (5 points) The extent to which time commitments of the project director and other key personnel are appropriate and adequate to implement the SLC project effectively.

(3) (5 points) The qualifications, including relevant training and experience, of the project director and other key personnel.

(4) (5 points) The adequacy of resources, including the extent to which the budget is adequate and costs are directly related to the objectives and SLC activities.

*Quality of the SLC Project Evaluation (20 Points)*

In determining the quality of the proposed project evaluation conducted by an independent, third-party evaluator, we consider the following factors:

(1) (5 points) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed SLC project.

(2) (5 points) The extent to which the evaluation will collect and report accurate qualitative and quantitative data that will be useful in assessing the success and progress of implementation, including, at a minimum—

(A) Measures of student academic achievement that provide data for the performance indicators identified in the application, including results that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, students with limited English proficiency, and other subgroups identified by the applicant; and

(B) Other measures identified by the applicant in the application as performance indicators.

(3) (5 points) The extent to which the methods of evaluation will provide timely and regular feedback to the LEA and the school on the success and progress of implementation and identify areas for needed improvement.

(4) (5 points) The qualifications and relevant training and experience of the independent evaluator.

## 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.

**Note:** Requirements listed in the NFP are material requirements. Failure to comply with any requirement or with any elements of the grantee's application would subject the grantee to administrative action including, but not limited to, designation as a ''high-risk'' grantee, the imposition of special conditions, or termination of the grant. Circumstances that might cause the Department to take this action include, but are not limited to—the grantee showing a decline in student achievement after two years of implementation of the grant; the grantee's failure to make substantial progress in completing the milestones outlined in the management plan included in the application; and the grantee's expenditure of funds in a manner that is inconsistent with the budget as submitted in the application.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. Additional reporting requirements are described elsewhere in this notice under section IV. Application and Submission Information, 2. *Content and Form of Application Submission.*

4. *Performance Measures:* The application requirements and other information related to performance indicators and objectives are described elsewhere in this notice under section IV. Application and Submission Information, 2. *Content and Form of Application Submission.*

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Deborah Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W241, Washington, DC 20202–6200. Telephone: (202) 205–3783 or by e-mail: *deborah.williams@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: *http://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: April 21, 2006.

**Henry L. Johnson,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 06–3928 Filed 4–25–06; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; State Vocational Rehabilitation Unit In-Service Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.265A

Dates

*Applications Available:* April 26, 2006.

*Deadline for Transmittal of Applications:* May 26, 2006.

*Deadline for Intergovernmental Review:* July 25, 2006.

*Eligible Applicants:* Only State agencies listed in the chart under *Estimated Available Funds* and designated under a State plan for vocational rehabilitation (VR) services under section 101(a) of the Rehabilitation Act of 1973, as amended, are eligible to receive an award under this competition. These applicants did not apply for an in-service training award during FY 2005 when quality awards were offered and, therefore, are not eligible to apply for quality awards. Consequently, this notice invites applications for new basic awards only for FY 2006. Other State agencies received five-year in-service training awards in FY 2005.

*Estimated Available Funds:* $228,942. A listing, by State agency, of estimated available funds for basic awards is as follows:

| State | Estimated Available Funds for Basic Awards |
|---|---|
| Puerto Rico | $171,288 |
| Virgin Islands | 19,218 |
| Guam | 19,218 |
| American Samoa | 19,218 |
| Total | 228,942 |

*Estimated Range of Basic Awards:* $19,218–$171,288.

*Estimated Number of Basic Awards:* 4.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* This program is designed to support projects for training State VR agency personnel in program areas essential to the effective management of the agency's program of VR services or in skill areas that will enable personnel to improve their ability to provide VR services leading to employment outcomes for individuals with disabilities.

**Program Authority:** 29 U.S.C. 772(g)(3).

*Applicable Regulations:* a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 388.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

### II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $228,942. A listing, by State agency, of estimated available funds for basic awards is as follows:

| State | Estimated Available Funds for Basic Awards |
|---|---|
| Puerto Rico | $171,288 |
| Virgin Islands | 19,218 |
| Guam | 19,218 |
| American Samoa | 19,218 |
| Total | 228,942 |

*Estimated Range of Basic Awards:* $19,218–$171,288.

*Estimated Number of Basic Awards:* 4.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

### III. Eligibility Information

1. *Eligible Applicants:* Only State agencies listed in the chart under *Estimated Available Funds* and designated under a State plan for VR services under section 101(a) of the Rehabilitation Act of 1973, as amended, are eligible to receive an award under this competition. These applicants did not apply for an in-service training award during FY 2005 when quality awards were offered and, therefore, are not eligible to apply for quality awards. Consequently, this notice invites applications for new basic awards only for FY 2006. Other State agencies received five-year in-service training awards in FY 2005.

2. *Cost Sharing or Matching:* Grantees under the State VR Unit In-Service Training program must provide at least 10 percent of the total cost of the project (34 CFR 388.30(a)), except that under 34 CFR 388.30(b), grantees designated to receive a minimum share of one third of one percent of the sums made available for the fiscal year ($5,765,661) are required to provide at least 4 percent of the total costs of the project. Accordingly, Puerto Rico is required to provide at least 10 percent of the total cost of the project, while the Virgin Islands, Guam, and American Samoa are required to provide at least 4 percent.

**Note:** Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

### 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 84.265A.

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 Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. 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, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

*Applications Available:* April 26, 2006. *Deadline for Transmittal of Applications:* May 26, 2006.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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. Deadline for Intergovernmental Review: July 25, 2006.

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:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the State VR Unit In-Service Training program-CFDA Number 84.265A must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the State VR Unit In-Service Training program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/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/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/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) Registering your organization, (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/assets/GrantsgovCoBrandBrochure8X11.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 successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. 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 above 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 an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* 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 as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the 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 (if available). 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:** Extensions referred to 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 deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

*and*

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marilyn P. Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, Potomac Center Plaza, Washington, DC 20202–2550. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.265A), 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 84.265A), 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, or

(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, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.265A), 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 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment 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

*Selection Criteria:* The selection criteria for this competition are in 34 CFR 385.31 and 388.20. The selection criteria to be used in this competition will be provided in the application package for this competition.

## 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. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The primary objective of the State VR Unit In-Service Training program is to maintain and upgrade the knowledge and skills of personnel currently employed in the public VR system. Grantees must provide training that responds to the needs identified in the Comprehensive System for Personnel Development (CSPD) required in section 101(a)(7) of the Rehabilitation Act of 1973, as amended.

In order to measure the success of the State VR Unit In-Service Training program grantees in meeting this objective, State VR agencies are required to submit performance data through the in-service annual performance report and their State plans. At a minimum, the annual performance report must include data on the percentage of currently employed VR State agency counselors who meet their States' CSPD standards.

## VII. Agency Contact

*For Further Information Contact:* Marilyn Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7346 or by e-mail: *Marilyn.Fountain@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: *http://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: April 21, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E6–6284 Filed 4–25–06; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER06–653–000, ER06–653–001]**

## Entergy Nuclear Power Marketing, LLC; Notice of Issuance of Order

April 19, 2006.

Entergy Nuclear Power Marketing, LLC (Entergy Nuclear PM) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sale of energy, capacity, and ancillary services at market-based rates. Entergy Nuclear PM also requested waiver of various Commission regulations. In particular, Entergy Nuclear PM requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Entergy Nuclear PM.

On April 19, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Entergy Nuclear PM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 19, 2006.

Absent a request to be heard in opposition by the deadline above, Entergy Nuclear PM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Entergy Nuclear PM, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Entergy Nuclear PM's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6236 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12198–001, Project No. 12213–001, Project No. 12274–001, Project No. 12297–001, Project No. 12309–001, Project No. 12369–001, Project No. 12535–001]**

### Green Point Hydro, LLC; Hugo Hydro, LLC; Meyers Hydro, LLC; Heflin Hydro, LLC; Ohio River L&D 52 Hydro, LLC; MSR 5 Hydro, LLC; Easton Diversion Dam Hydro, LLC; Notice of Surrender of Preliminary Permits

April 19, 2006.

Take notice that the permittees for the subject projects have requested voluntary surrender of their preliminary permits.

| Project No. | Project name | Stream | State | Expiration date |
|---|---|---|---|---|
| 12198–001 | Green Point Upper Dam | Green Point Creek | OR | 11–30–2007 |
| 12213–001 | Hugo Dam Hydroelectric | Kiamichi River | OK | 10–31–2006 |
| 12274–001 | John T. Meyers L&D | Ohio River | IN | 11–30–2007 |
| 12297–001 | Heflin L&D | Tombigbee River | AL | 11–30–2007 |
| 12309–001 | Ohio River L&D #52 | Ohio River | KY | 11–30–2007 |
| 12369–001 | Mississippi River L&D #5 | Mississippi River | WI | 11–30–2007 |
| 12535–001 | Easton Diversion Dam | Yakima River | WA | 2–29–2008 |

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or a holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6238 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP06–124–000]**

### Gulf South Pipeline Company; Notice of Request Under Blanket Authorization

April 19, 2006.

Take notice that on April 7, 2006, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway, Houston, Texas 77046, filed in Docket No. CP06–124–000, a request pursuant to sections 157.205 and 157. 208 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.208 (2005)) for authorization to reduce the maximum allowable operating pressure (MAOP) of its 8-inch Jackson to Hattiesburg Lateral located in Rankin, Simpson, Covington, Forrest, and Jones Counties, Mississippi, under Gulf South's blanket certificate issued in Docket No CP82–430–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Gulf South proposes to reduce the MAOP of Index 387, between milepost 0.00 and milepost 80, from 419 psig to 165 psig. Gulf South confirms that recent operating history of this Lateral shows that customers consistently have requested and used substantially lower volumes of gas. Gulf South states that the current firm transportation obligations on Index 387 are approximately 12.0 MMcf per day, and that the proposed reduction of the MAOP will not affect their ability to meet its contractual firm obligations, since the demand for natural gas deliveries from the Lateral has been minimal. Also, Gulf South neither foresees a material increase in demand nor any market requirement for Gulf South to maintain a higher MAOP on this Lateral. Furthermore, Gulf South explains that over the years there has been a significant encroachment of the pipeline in this area due to an increase in population density. As a result, Gulf South believes that it is acting in the public interest in lowering the MAOP of the line due to this encroachment. Also, Gulf South states that their proposal to lower the MAOP of Index 387 will permit them to continue to operate the Lateral well within safe limits given the age of the line and the increase in population density without adversely affecting the reliability of the line. Finally, Gulf South states that no construction activities will be required to facilitate the MAOP reduction.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be

authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Any questions regarding this application should be directed to J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas 77046, or call (713) 544–7309 or fax (713) 544–3540 or by e-mail *kyle.stephens@gulfsouthpl.com.*

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6239 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR06–15–000]**

### Overland Trail Transmission, LLC; Notice of Petition for Rate Approval

April 19, 2006.

Take notice that on March 31, 2006, Overland Trail Transmission, LLC (OTTCO) filed a petition for rate approval for NGPA section 311 maximum transportation rates, pursuant to section 284.123(b)(2) of the Commission's regulations. OTTCO request an effective date for its new section 311 as of April 1, 2006.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. eastern time April 28, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6235 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–4852–000]**

### Harry J. Pearce; Notice of Filing

April 19, 2006.

Take notice that on April 12, 2006, Harry J. Pearce filed an application requesting authority to hold interlocking positions, pursuant to section 305(a) of the Federal Power Act and part 45 of the Commission's Regulations, as a director of MDU Resources Group, Inc., Nortel Networks Corporation and Nortel Networks Limited.

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 May 3, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6237 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL05–146–000, *et al.*]**

### Independent Energy Producers Association, *et al.*; Electric Rate and Corporate Filings

April 14, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Independent Energy Producers Association, Complainant v. California Independent System Operator Corporation, Respondent**

[Docket No. EL05–146–000]

Take notice that on March 31, 2006, the California Independent System Operator Corporation filed an agreement to settle a pending complaint with the Settling Parties.

*Comment Date:* 5 p.m. eastern time on April 20, 2006.

**2. LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, Western Kentucky Energy Corporation, LG&E Energy Marketing Inc., et al.**

[Docket Nos. ER94–1188–040, ER98–4540–009, ER99–1623–009, ER98–1279–011, EL05–99–004]

Take notice that on April 13, 2006, LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company and Western Kentucky Energy Corporation (collectively, LG&E Parties) submit a supplemental refund report in compliance with the Commission's February 15, 2006 letter order.

*Comment Date:* 5 p.m. eastern time on April 21, 2006.

**3. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER04–691–070]

Take notice that on April 3, 2006 Midwest Independent Transmission System Operator, Inc., filed proposed revisions to its Open Access Transmission and Energy Markets Tariff, Third Revised Volume No. 1, in compliance with the Commission's 3/3/06 Order.

*Comment Date:* 5 p.m. eastern time on April 24, 2006.

**4. Auburndale Power Partners, L.P.**

[Docket No. ER06–735–000]

Take notice that on March 29, 2006 Auburndale Power Partners, L.P. filed a withdrawal of its Petition for Order Accepting Market-Based Rate Schedule filed March 17, 2006.

Comment Date: 5 p.m. eastern time on April 21, 2006.

**Standard Paragraph**

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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6233 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

April 19, 2006.

Take notice that the Commission received the following electric securities filings.

*Docket Numbers:* ES06–32–000.

*Applicants:* Cambridge Electric Light Company.

*Description:* Cambridge Electric Light Co. submits its section 204 application for authority to issue short-term debt securities from time to time, in amounts such that the aggregate principal amount of securities outstanding at one time, shall not exceed $80,000,000.

*Filed Date:* 4/5/2006.

*Accession Number:* 20060412–0109.

*Comment Date:* 5 p.m. eastern time on Wednesday, April 26, 2006.

*Docket Numbers:* ES06–33–000.

*Applicants:* Boston Edison Company.

*Description:* Boston Edison Co. submits its section 204 application for authority to issue short-term debt securities for time to time in amounts such that the aggregate principal amount of short-term securities outstanding at any one time, shall not exceed $450,000,000.

*Filed Date:* 4/5/2006.

*Accession Number:* 20060412–0072.

*Comment Date:* 5 p.m. eastern time on Wednesday, April 26, 2006.

*Docket Numbers:* ES06–34–000.

*Applicants:* Commonwealth Electric Company.

*Description:* Commonwealth Electric Co. submits its section 204 application for authority to issue short-term debt securities from time to time, in amount not to exceed $125,000,000.

*Filed Date:* 4/5/2006.

*Accession Number:* 20060412–0073.

*Comment Date:* 5 p.m. eastern time on Wednesday, April 26, 2006.

*Docket Numbers:* ES06–35–000; EC06–110–000.

*Applicants:* Entergy Services Inc.

*Description:* Entergy Services Inc., on behalf of its associate companies: Entergy Nuclear Generation Co. et al. submits a joint application pursuant to sections 204(a) and 203(a) of the FPA.

*Filed Date:* 4/6/2006.

*Accession Number:* 20060417–0198.

*Comment Date:* 5 p.m. eastern time on Thursday, April 27, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online

service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6234 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EC06–106–000, et al.]**

### Southeast Chicago Energy Project, LLC. et al.; Electric Rate and Corporate Filings

April 19, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Southeast Chicago Energy Project, LLC; Exelon Generation Company, LLC; Peoples Calumet, LLC**

[Docket No. EC06–106–000]

Take notice on April 6, 2006, Southeast Chicago Energy Project, LLC, Exelon Generation Company, LLC and Peoples Calumet, LLC filed an application, pursuant to section 203 of the Federal Power Act, for authorization to transfer membership interests in a public utility.

*Comment Date:* 5 p.m. eastern time on April 28, 2006.

**2. Orange Power Holdings LP, Mulberry Power Holdings LP, O&M Star Generation LLC**

[Docket No. EC06–107–000]

Take notice on April 12, 2006, Orange Power Holdings LP, Mulberry Power Holdings LP and O&M Star Generation LLC filed an application, pursuant to section 203 of the Federal Power Act, for order authorizing transfer of control of jurisdictional facilities.

*Comment Date:* 5 p.m. eastern time on May 3, 2006.

**3. Kansas Gas and Electric Company, Elk River Windfarm, LLC**

[Docket No. EC06–108–000]

Take notice on April 11, 2006, Kansas Gas and Electric Company and Elk River Windfarm, LLC filed a joint application, pursuant to section 203 of the Federal Power Act, for authorization for the disposition of jurisdictional facilities.

*Comment Date:* 5 p.m. eastern time on May 2, 2006.

**4. CES Energy, Inc.; J-POWER Frontier GP, LLC; J-POWER Frontier, L.P.; J-POWER USA Investment Co., Ltd.; Tenaska Energy, Inc.; Tenaska Energy Holding, LLC; Tenaska Frontier Partners, Ltd.**

[Docket No. EC06–109–000]

Take notice on April 6, 2006, CES Energy, Inc., J-POWER Frontier GP, LLC, J-POWER Frontier, L.P., J-POWER USA Investment Co., Ltd., Tenaska Energy, Inc. Tenaska Energy Holding, LLC, and Tenaska Frontier Partners, Ltd. filed a joint application, pursuant to the section 203 of the Federal Power Act, for authorization to transfer jurisdictional facilities.

*Comment Date:* 5 p.m. eastern time on April 28, 2006.

**5. Spindle Hill Energy LLC**

[Docket No. EG06–45–000]

Take notice that on April 7, 2006, Spindle Hill Energy LLC submitted a notice of self-certification of exempt wholesale generator status pursuant to sections 366.1 and 366.7 of the Commission's regulations.

*Comment Date:* 5 p.m. eastern time on April 28, 2006.

**Standard Paragraph**

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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–6240 Filed 4–25–06; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2006–0361; FRL–8162–3]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Trade Secret Claims for Community Right-To-Know and Emergency Planning (EPCRA Section 322); EPA ICR No. 1428.07, OMB Control No. 2050–0078

**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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on October 31, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2006–0361, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *superfund.docket@epa.gov.*
- Fax: 202–566–0224.

*Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–2006–0361. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8019; fax number: 202–564–2625; email address: *jacob.sicy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## 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–SFUND–2006–0361 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 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 Superfund Docket is 202–566–0276.

Use *http://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.

## What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the

(ii) Proper performance of the functions of the Agency, including whether the information will have practical utility;

(iii) 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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. 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.

## What Information Collection Activity or ICR Does This Apply to?

Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322)—EPA No. 1428.07 Docket ID No. EPA–HQ–SFUND–2006–0361.

*Affected entities:* Entities potentially affected by this action are manufacturers or non-manufacturers subject to reporting under sections 303, 311/312 or 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

*Title:* Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322).

*ICR number:* EPA ICR No. 1428.07, OMB Control No. 2050–0078.

*ICR status:* This ICR is currently scheduled to expire on October 31, 2006. 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:* This information collection request pertains to trade secrecy claims submitted under section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA contains provisions requiring facilities to report to State and local authorities, and EPA, the presence of extremely hazardous substances (described in section 302), inventory of hazardous chemicals (described in sections 311 and 312) and manufacture, process and use of toxic chemicals (described in section 313). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public

petitions to the Agency for review of the ''sufficiency'' of trade secrecy claims.

Trade secrecy protection is provided for specific chemical identities contained in reports submitted under each of the following EPCRA sections: (1) 303(d)(2)—Facility notification of changes that have or are about to occur, (2) 303(d)(3)—Local Emergency Planning Committee (LEPC) requests for facility information to develop or implement emergency plans, (3) 311—Material Safety Data Sheets (MSDSs) submitted by facilities, or lists of those chemicals submitted in place of the MSDSs, (4) 312—Tier II emergency and hazardous chemical inventory forms, and (5) 313—Toxic chemical release inventory forms.

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 and 48 CFR chapter 15.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.8 hours per claim. 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 1,050.

*Frequency of response:* Annual.

*Estimated total average number of responses for each respondent:* 10.

*Estimated total annual burden hours:* 3,483 hours.

*Estimated total annual costs:* $147,543. No capital or operation and maintenance costs associated with this collection.

The burden and cost reported here are from the current approved ICR. The costs will change in the package that is submitted to OMB which will be based on the most recent labor and wage rate information reported in the Bureau of Labor and Statistics. EPA contacted few facilities that submitted trade secret claims for the reporting years 2002 through 2004. These facilities have reported that they take an average of 5 hours per claim. It is lower than the Agency estimate in the previous ICR, which is 9.8 hours per claim. To be conservative, the Agency may continue to use the same estimate for this ICR.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 18, 2006.

**Deborah Y. Dietrich,**

*Director, Office of Emergency Management.*

[FR Doc. E6–6253 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8161–4]**

## Hazardous Waste Management System; Notice of Availability of EPA's Manifest Registry

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice announcing the Activation of EPA's Manifest Registry.

**SUMMARY:** This notice announces that EPA is accepting applications from organizations seeking to become registered printers and distributors of the new national Uniform Hazardous Waste Manifest.

**FOR FURTHER INFORMATION CONTACT:** Questions pertaining to this notice or on EPA's Manifest Registry in general may be directed to Wanda LeBleu in EPA's Office of Solid Waste at (703) 308–0438 or to *lebleu.wanda@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

On March 4, 2005, the U.S. Environmental Protection Agency published regulations modifying the hazardous waste manifest system in several ways (70 FR 10814). Among other things, EPA standardized the content and appearance of the Uniform Hazardous Waste Manifest and continuation sheet (EPA Forms 8700–22 and 8700–22A). EPA also established a registry process at 40 CFR 262.21 for organizations (e.g., States, waste management companies, industrial facilities and commercial printers) to apply to EPA to print the new manifest for use and distribution. Anyone who wants to print and distribute the new forms first must obtain approval from EPA.

To assist in implementing the new manifest rule, EPA recently posted a new Manifest Registry Web site at: *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/registry/index.htm.*

This Web site is designed to provide instructions to prospective printers to prepare their application to EPA, assist the public in obtaining the new manifests, and assist waste handlers in completing their manifests.

In the March 4, 2005 final rule, EPA established a compliance date of September 5, 2006 for use of the new manifest and continuation sheet. Beginning on this date, waste shipments must use the new forms in all States. It is important to note that States will no longer be the exclusive source of blank forms—forms from any approved printer will be valid.

This notice announces that EPA is accepting applications from organizations who seek to be approved under the registry process to print and distribute the new national uniform hazardous waste manifest. The application process consists of two steps: (1) An initial application, and (2) submission of form samples. The initial application provides general information on the applicant's organization (e.g., contact information and description of printing operations). EPA will review this initial application and either approve it or request additional information. Once the initial application is complete, EPA will either approve the application or deny it. After approval of the initial application, EPA will send the applicant electronic files of the manifest and continuation sheet in Adobe Portable Document Format (PDF) and request several samples of the forms complying with the print requirements of § 262.21(f), as well as a brief description of these samples (e.g., indication of the paper type used). EPA will evaluate the samples in accordance with the print requirements in the manifest regulations, and either approve the applicant to print the forms for use and distribution, or indicate why the forms do not qualify for approval.

Once an applicant is approved, EPA will add that organization's information to the Table of Registered Printers on the Web site, and will indicate whether that printer is offering its manifest forms for sale to the general public. A waste handler can obtain forms from any printing source approved by EPA.

Dated: April 3, 2006.

**Matt Hale,**

*Director, Office of Solid Waste.*

[FR Doc. E6–6185 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2006–0358; FRL–8059–9]**

## Reporting for the 2006 Inventory Update Rule (IUR) Information Collection; Notice of Public Workshop

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is convening a public workshop to provide training for persons responsible for submitting information during the 2006 Inventory Update Reporting (IUR) period. The workshop will focus on reporting requirements, case studies, the electronic IUR software, and submission of IUR information through the Internet. The IUR requirements were modified by amendments to 40 CFR part 710 promulgated on January 7, 2003 (68 FR 847) (FRL–6767–4) and December 19, 2005 (70 FR 75059) (FRL–7743–9). This workshop is open to the public.

**DATES:** The workshop will be held on May 22, 2006 from 8:30 a.m. to 3:30 p.m.

**ADDRESSES:** The workshop will be held at the Millennium Hotel, 200 South Fourth Street, St. Louis, Missouri.

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

*For technical information contact*: Franklyn Hall, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8522; e-mail address: *hall.franklyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture chemical substances currently subject to reporting under the IUR as amended on January 7, 2003 (68 FR 847) and December 19, 2005 (70 FR 75059) and codified as 40 CFR part 710. Persons who process chemical substances but who do not manufacture or import chemical substances are not subject to the requirements of 40 CFR part 710. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers and importers currently subject to the IUR (NAICS codes 325, 32411), e.g., manufacturers and importers of inorganic chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0358. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

2. *Electronic access* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

### II. Background

EPA is convening a workshop to train stakeholders on how to report for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. EPA is required by section 8(b) of the Toxic Substances Control Act (TSCA) to compile and update an inventory of chemical substances manufactured or imported into the United States. Every four years, manufacturers (including importers) of certain chemical substances on the TSCA Chemical Substance Inventory have been required to report data specified in the TSCA section 8(a) IUR, 40 CFR part 710. Past updates included information on the chemical's production volume, site-limited status, and plant site information. Amendments to the IUR promulgated on January 7, 2003 (68 FR 847) and December 19, 2005 (70 FR 75059) expanded the data reported on certain chemicals to assist EPA and others in screening potential exposures and risks resulting from manufacturing, processing, and use of TSCA chemical substances. At the same time, EPA amended the IUR regulations to increase the production volume threshold which triggers reporting requirements from 10,000 pounds per year to 25,000 pounds per year and established a new higher threshold of 300,000 pounds per year above which manufacturers must report additional information on downstream processing and use of their chemical substances. The 2003 amendments to the IUR also revoked the exemption from reporting for inorganic chemical substances, provided a partial exemption from reporting of processing and use information for chemical substances of low current interest, continued the current exemption from reporting for polymers, microorganisms, and naturally occurring chemical substances, and increased the interval between collection periods from four years to five years. These changes modify requirements for information collected in calendar year 2005 and submitted in 2006 and thereafter. The workshop may be of interest to persons currently reporting under the IUR and to manufacturers and importers of inorganic chemical substances.

The workshop will include a series of presentations by representatives of EPA on reporting for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. Subjects discussed will include reporting requirements, instructions for completing the reporting form, how to assert confidentiality claims, how to submit completed reports to EPA, case studies illustrating different aspects of

reporting, the electronic IUR software, and submission of IUR data through the Internet. During the workshop, persons in attendance will be able to ask questions regarding the material being presented. The purpose of this workshop is to provide training to persons who must report in 2006 under the IUR regulation.

### III. How Can I Request to Participate in this Workshop?

You may register to participate in this workshop on the IUR Web site located at *http://www.epa.gov/oppt/iur*. There is a workshop registration link on this Web site that will allow you to provide all necessary information for participation. There is no charge for attending this public workshop.

### List of Subjects

Environmental protection, Chemicals, Reporting and recordkeeping requirements.

Dated: April 19, 2006.

**Charles M. Auer,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. E6–6308 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8162–1]**

## Science Advisory Board Staff Office; Environmental Economics Advisory Committee; Notification of a Public Advisory Committee Meeting (Teleconference)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency), Science Advisory Board (SAB) Staff Office announces a public teleconference for the SAB Environmental Economics Advisory Committee (EEAC) to discuss its advisory activities.

**DATES:** The teleconference will take place on May 19, 2006 from 1 p.m. to 3 p.m. (eastern time).

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to obtain the teleconference call-in number and access code; would like to submit written or brief (less than five minutes) oral statements; or wants further information concerning this teleconference, must contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9867; fax: (202) 233–0643; or e-mail at: *stallworth.holly@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The EEAC, a committee of the EPA Science Advisory Board, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The EEAC is charged with providing advice, information and recommendations through the chartered SAB to the Agency on the economic issues associated with various EPA programs.

The EEAC teleconference will provide an opportunity for members to discuss forthcoming advisory activities. The meeting agenda will cover two topics: (a) EEAC's advisory activities for EPA's National Center for Environmental Economics (NCEE)'s work on valuing the reduction of mortality risk and other projects; and (b) the possibility of EEAC providing unsolicited advice to EPA concerning the impact of the TRI Burden Reduction rule (see 70 FR 57871, October 4, 2005 and 70 FR 57822, October 4, 2005) on the data needs of the scientific community. The meeting agenda will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the meeting.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail at least seven days before the teleconference in order to be placed on the public speaker list. *Written Statements:* Written statements should be received in the SAB Staff Office at least seven days before the meeting so that the information may be made available to the Panel for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, contact information provided above. To request accommodation of a disability please contact the DFO, preferably at least ten business days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 20, 2006.

**Anthony F. Maciorowski,**

*Associate Director for Science, EPA Science Advisory Board Staff Office.*

[FR Doc. E6–6255 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8162–5]**

## Science Advisory Board Staff Office Notification of Two Public Teleconferences and a Meeting of the Science Advisory Board Environmental Engineering Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences and a face-to-face meeting of the SAB Environmental Engineering Committee to provide advice on the Sustainability Research Strategy and the associated multi-year research plan, Science and Technology for Sustainability.

Agendas and documents will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the teleconferences and face-to-face meeting.

**DATES:** Public teleconferences of the SAB Environmental Engineering Committee will be held on Wednesday, May 17, 2006, from noon to 4 p.m. eastern time and Tuesday August 1, 2006 from 1 to 4 eastern time. The face-to-face public meeting will be held June 13–15, 2006, from 9 a.m. to 5:30 p.m. eastern standard time on the first two days, ending at 3 p.m. on the final day.

**ADDRESSES:** The public teleconferences will take place via telephone only. The public face-to-face meeting will be held at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** General information concerning the SAB can be found on the SAB Web Site at: *http://www.epa.gov/sab.* Members of the public who wish to obtain the call-in number and access code for the teleconferences, or further information concerning the public face-to-face meeting may contact Ms. Kathleen White, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office

(1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9878; by fax at (202) 233–0643; or by e-mail at *white.kathleen@epa.gov.* Technical Contacts: For questions and information concerning the Sustainability Research Strategy, please contact Dr. Diana Bauer, U.S. Environmental Protection Agency, by telephone (202) 343–9759; or by e-mail *bauer.diana@epa.gov.* For questions and information concerning the multi-year research plan, Science and Technology for Sustainability, please contact Dr. Gordon Evans, U.S. Environmental Protection Agency, by telephone at (513) 569–7684; or by e-mail at *evans.gordon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. EPA's Office of Research and Development has requested the SAB to provide advice on EPA's Draft Sustainability Research Strategy its multi-year research plan. The Sustainability Research Strategy proposes a scientific framework for a more systematic and holistic approach to environmental protection that takes into consideration the complex nature of environmental issues and the welfare of future generations. The multi-year research plan describes ORD's research to meet the short-term and long-term goals of the Research Strategy.

The SAB Environmental Engineering Committee will provide this advice, augmented by other SAB members. Biosketches for the SAB participants will be posted at the SAB Web site. The Committee will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

The purpose of the May 17, 2006 teleconference is to prepare the Committee for the face-to-face meeting through briefings, a discussion of the charge, an opportunity to ask preliminary questions, and the identification of areas where additional information would be valuable. The purpose of the June 13–15, 2006, face-to-face meeting is for the Committee to reach consensus on the content of their response to the charge questions, to capture that consensus in writing, to brief the Agency on the major findings and conclusions, and to respond to Agency questions. As time allows, the Committee may also hear briefings, engage in planning for future activities, and engage in other committee business. The purpose of the August 1, 2006, teleconference is to provide the Committee with an opportunity to discuss the draft report and agree to final language or to additional changes needed. Subsequently, the Committee's report will be considered by the Board and transmitted to the Administrator.

*Procedures for Providing Public Input:* Members of the public may submit relevant written or oral information for the Environmental Engineering Committee to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of thirty minutes for all speakers. In general, individuals or groups requesting an oral presentation at a face-to-face meeting will be limited to five to ten minutes with no more than two hours for all speakers. Those interested should contact Ms. White (preferably via e-mail) no later than May 10 for the May 17 teleconference, June 6 for the June 13–15 face-to-face meeting, and July 25 for the August 1 teleconference to be placed on the public speaker list. *Written Statements:* Written statements should be received in the SAB Staff Office at least seven days before the meeting so that the comments may be made available to the Committee for timely consideration. Comments should be supplied to the DFO in the following formats: one hard copy with original signature by mail, and one electronic copy by e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MSWord, MSPowerPoint or Rich Text files in IBM–PC/Windows 98/2000/XP format).

*Accessibility:* For information on access or services for people with disabilities, please contact Ms. Kathleen White at (202) 343–9878 or *white.kathleen@epa.gov.* To request accommodation of a disability, please contact Ms. White, preferably at least ten business days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 21, 2006.

**Anthony F. Maciorowski,**

*Associate Director for Science, EPA Science Advisory Board Staff Office.*

[FR Doc. E6–6254 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0339; FRL–8061–3]**

## Alkyl Dimethyl Ammonium Chloride Risk Assessments and Preliminary Risk Reduction Options; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessments, preliminary risk reduction options, and related documents for the Group II Quat Clustr of structurally similar quaternary ammonium compounds known as alkyl dimethyl ammonium chloride (ADBAC), and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED), for ADBAC through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0339, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility

will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0339. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline McFarlane, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6416; fax number: (703) 308–6416; e-mail address: *campbell-mcfarlane.jacqueline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, preliminary risk reduction options, and related documents for ADBAC and encouraging the public to suggest risk management ideas or proposals. This chemical is an antimicrobial pesticide used in agricultural, food handling, commercial, institutional/industrial, residential, and public access, and medical settings. EPA developed the risk assessments and preliminary risk reduction options for ADBAC through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

ADBAC is an active ingredient in numerous types of products. These products are mainly disinfectants, food and non-food contact sanitizers, wood preservatives, bacteriocide/bacteriostat, microbiocide/microbiostats, fungicide/fungistats, algaecides, and virucides. These products are used in agricultural, food handling, commercial, institutional/industrial, residential, and public access, and medical settings. Examples of registered uses for ADBAC in these settings include application to indoor and outdoor hard surfaces (e.g., walls, floors, tables, toilets, and other similar surfaces), eating utensils, laundry, carpets, agricultural tools and vehicles, egg shell, shoes, milking equipment and udders, humidifiers, RV

tanks, medical instruments, human remains, ultrasonic tanks, reverse osmosis units, and water storage tanks. There are products that are used in residential and commercial swimming pools, aquatic areas such as decorative ponds, decorative fountains, and agricultural watering lines, and industrial process and water systems such as once through and recirculating cooling water systems, cooling water towers, evaporative condensers, pasteurizers, drilling mud and packer fluids, oil well injection and wastewater systems, pulp and paper products, water, and chemicals. Additionally, these products are used in wood preservation through non-pressure and pressure treatment methods. There are a number of methods for applying these products such as fogging in both occupational and residential settings. The Agency's risk assessment identified residential, occupational, and ecological risks of concern for some exposure scenarios. Due to limited information for some exposure scenarios, conservative assumptions were used in this assessment. The Agency is interested in receiving any information.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for ADBAC. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as higher tier modeling to assess degradation for once-through cooling towers, a leaching study to address the liquid availability from ADBAC treated wood, refinement of the percent active ingredient in solution for pressure treatment of lumber, detailed description of the application/spray equipment used on hard surfaces and wood, detailed use information, confirmatory exposure data to support the using the 10% transfer rate in the dietary assessment, confirmatory exposure data to support the occupational scenarios, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA also is releasing for public comment its preliminary risk reduction options for ADBAC, and is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to ADBAC, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For ADBAC, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for ADBAC. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 19, 2006.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E6–6299 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0320; FRL–8061–5]**

## 2-(Thiocyanomethylthio)benzothiazole Risk Assessment; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessment, preliminary risk reduction options, and related documents for the pesticide 2-(Thiocyanomethylthio)benzothiazole (TCMTB), and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for TCMTB through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0320 , by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays).

Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0320. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Kathryn Avivah Jakob, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8481; e-mail address: *jakob.kathryn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessment, preliminary risk reduction options, and related documents for 2-TCMTB, and is encouraging the public to suggest risk management ideas or proposals. As an active ingredient, TCMTB products are used in commercial/institutional premises, and residential and public access areas as a wood preservative, microbiocide/microbiostat, bacteriocide/bacteriostat, industrial materials preservative, and slimicide. TCMTB is also used as a fungicide for farm seed treatment. EPA developed the risk assessment and preliminary risk reduction options for TCMTB through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

As an antimicrobial pesticide, TCMTB is used largely as a wood preservative for antisapstain control. It is also used as a microbiocide/microbiostat and bacteriocide/bacteriostat in industrial

processes and water systems (e.g., pulp and paper mill systems, sewage systems), as well as in industrial materials as a preservative (e.g., pulp/paper products, leather products and hides, latex, wallpaper). As an agricultural pesticide, TCMTB is used for seed treatment of crops (e.g., barley, oats, rice, wheat, safflower, cotton, sugar beets). TCMTB has 23 tolerances in 40 CFR 180.288 for use as a fungicide on barley, beets, corn, cotton, oats, rice, safflower, sorghum and wheat. However, all agricultural uses will be canceled by the technical registrant with the exception of barley, oat, rice, wheat, safflower, cotton and sugar beets; these uses will be supported by two end-use registrants. Presently, there are 45 registered products containing TCMTB as an active ingredient and 4 pending products. The technical registrant of TCMTB will be canceling 25 TCMTB uses and 11 TCMTB products. The Agency's risk assessment identified residential, occupational and ecological risks of concern for some exposure scenarios. Because limited information is available for some exposure scenarios, conservative assumptions were sometimes used in the risk assessment. The Agency is interested in receiving any information that could assist in refining the risk assessment.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for TCMTB. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as ecological data to fill data gaps for aquatic toxicity studies for invertebrates and confirmatory worker exposure data for residential/occupational data gaps, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA also is releasing for public comment its preliminary risk reduction options for TCMTB, and is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to TCMTB, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For TCMTB, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment, few complex issues, and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for TCMTB. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests, 2-(Thiocyanomethylthio)benzothiazole (TCMTB).

Dated: April 20, 2006.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E6–6300 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0338; FRL–8061–2]**

## Didecyl Dimethyl Ammonium Chloride Risk Assessments and Preliminary Risk Reduction Options; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessments, preliminary risk reduction options, and related documents for the Group 1 Quat Cluster pesticide didecyl dimethyl ammonium chloride, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED), for didecyl dimethyl ammonium chloride through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATED:** Comments must be received on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0338, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The

Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0338. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Tracy Lantz, Antimicrobials Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6415; fax number: (703) 308–8481; e-mail address: *lantz.tracy@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, preliminary risk reduction options, and related documents for didecyl dimethyl ammonium chloride, and encouraging the public to suggest risk management ideas or proposals. This chemical is an antimicrobial pesticide used in agricultural, food handling, commercial, institutional/industrial, residential and public access, and medical settings. EPA developed the risk assessments and preliminary risk reduction options for didecyl dimethyl ammonium chloride through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

Products containing this chemical are used as disinfectants, food and non-food contact sanitizers, wood preservatives, bacteriocide/bacteriostats, microbiocide/microbiostats, fungicide/fungistats, algaecides and virucides. These products are used in agricultural, food handling, commercial,

institutional/industrial, residential and public access, and medical settings. Examples of registered uses in these settings include application to indoor and outdoor hard surfaces (e.g., walls, floors, tables, toilets, and other similar surfaces), eating utensils, laundry, carpets, agricultural tools and vehicles, egg shells, shoes, milking equipment and udders, humidifiers, medical instruments, human remains, ultrasonic tanks, reverse osmosis units, and water storage tanks. These products are also used in residential and commercial swimming pools, aquatic areas such as decorative ponds and decorative fountains, and industrial process and water systems such as re-circulating cooling water systems, drilling muds and packer fluids, oil well injections and wastewater systems. Additionally, these products are used for wood preservation through non-pressure and pressure-treatment methods. There are application methods of concern such as fogging in occupational settings. The Agency's risk assessment identified residential, ecological, and occupational risks of concern for some exposure scenarios. Due to limited information for some exposure scenarios, conservative assumptions were used in the risk assessment. The Agency is interested in receiving any information that could assist in refining the risk assessment.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for didecyl dimethyl ammonium chloride. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as higher tier modeling for once-through cooling towers, refinement of percent active ingredient in solution for pressure treatment of lumber, detailed use information (encompasses the information requested on secondary oil field recovery and food processing plants), confirmatory studies to support occupational scenarios, confirmatory data to establish the reliability of using the 10% transfer rate in the dietary assessment, wipe data to assess the children's dermal contact to treated decks and play sets, non-target plant phytotoxicity testing, acute sheepshead minnow testing, acute eastern oyster embryo larvae testing, chronic *Daphnis manga* testing, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA also is releasing for public comment its preliminary risk reduction options for didecyl dimethyl ammonium chloride, and is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to didecyl dimethyl ammonium chloride, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For didecyl dimethyl ammonium chloride, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for didecyl dimethyl ammonium chloride. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 19, 2006.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E6–6301 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0293; FRL–8059–6]**

## Sabadilla Alkaloids; Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide sabadilla alkaloids, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide sabadilla alkaloids through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0293, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0293. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Mark Perry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8024; fax number: (703) 308–7070; e-mail address: *mark.perry@epa.gov*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, sabadilla alkaloids under section 4(g)(2)(A) of FIFRA. Sabadilla alkaloids are insecticides used for the control of thrips on citrus, avocados, and mangos. Sabadilla alkaloids are obtained from the ground extract of the sabadilla plant. Formulations of sabadilla alkaloid pesticides are currently available as wettable powder with the active ingredient comprising about 0.2% of the active ingredient. EPA has determined that the data base to support reregistration is substantially complete and that products containing sabadilla alkaloids will be eligible for reregistration, provided the risks are mitigated either in the manner

described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing sabadilla alkaloids.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the sabadilla alkaloids tolerances included in this notice.

Although the sabadilla alkaloids RED was signed on September 27, 2004, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the list of additional generic data requirements, summary of labeling changes, appendices, and other relevant information, have been added to the sabadilla alkaloids RED document. In addition, subsequent to signature, EPA identified several minor errors and ambiguities in the document. Therefore, for the sake of accuracy, the Agency also has included the appropriate error corrections, amendments, and clarifications. None of these additions or changes alter the conclusions documented in the September 27, 2004 sabadilla alkaloids RED. All of these changes are described in detail in an errata memorandum which is included in the public docket for sabadilla alkaloids.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like sabadilla alkaloids, which pose few risk concerns, have low use, affect few if any stakeholders, and require little risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the sabadilla alkaloids RED.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Sabadilla alkaloids, however, poses few risks that require mitigation. The Agency therefore is issuing the sabadilla alkaloids RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency docket for sabadilla alkaloids. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the sabadilla alkaloids RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 20, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–6303 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0328; FRL–8061–1]**

## Chlorine Dioxide Draft Risk Assessments; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessments, preliminary risk reduction options, and related documents for the pesticides chlorine dioxide, sodium chlorite and sodium chlorate (antimicrobial uses), and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for chlorine dioxide through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before June 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0328 , by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The

Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0328 . EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

ShaRon Carlisle, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address: *carlisle.sharon@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for chlorine dioxide and encouraging the public to suggest risk management ideas or proposals. Chlorine dioxide, sodium chlorite and sodium chlorate are active ingredients in numerous products used in the control of bacteria, fungi and algal slimes. In addition, it is used to disinfect drinking water and as a microbiocide in cooling tower waters. EPA developed the risk assessments for chlorine dioxide through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

At this time, products containing chlorine dioxide and sodium chlorite are intended for agricultural, commercial, industrial, medical and residential use. The agricultural premises and equipment uses include the disinfection of hard surfaces and equipment (such as hatching facilities

and mushroom houses) and water systems (such as chiller water and humidification water in poultry houses). Commercial, industrial, and medical uses include disinfection of hard surfaces (e.g., floors, walls, and laboratory equipment), human drinking and industrial cooling water systems, pulp/paper mills, and food rinses. Residential uses include disinfection of swimming pools, hard surfaces (e.g., floors, bathrooms), heating ventilating and air-conditioning systems, and pool and spa water circulation system treatments. In addition, there is a continuous release gas product (sachet) for the home to control odors.

The Agency's risk assessments for chlorine dioxide identified dietary, residential and occupational risks of concern for some exposure scenarios. Because limited information is available for some exposure scenarios, conservative assumptions were sometimes used in the risk assessment. The Agency is interested in receiving any information that could assist in refining the risk assessment.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for chlorine dioxide. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is providing an opportunity for interested parties to provide risk management proposals.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to chlorine dioxide compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For chlorine dioxide, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments, few complex issues, and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for chlorine dioxide. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 19, 2006.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E6–6304 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0154; FRL–8056–9]**

## 2-Phenylphenol and Salts Risk Assessments; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessment(s), preliminary risk reduction options, and related documents for the pesticide 2-phenylphenol (orthophenylphenol) and salts. This notice opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for orthophenylphenol and salts through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or beforeJune 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0154, by one of the following methods:

- Federal eRulemaking Portal:*http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm.

S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0154. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Rebecca Miller, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0012; fax number: (703) 308–8481; e-mail address:*miller.rebecca@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, and related documents for orthophenylphenol and salts and encouraging the public to suggest risk management ideas or proposals. Orthophenylphenol (including its potassium and sodium salts, potassium-orthophenylphenol and sodium-orthophenylphenol respectively) is a bacteriostat, microbiostat, menaticide, fumigant, fungicide, and bactericide chemical primarily used indoors. Sodium-orthophenylphenol is used as an inert ingredient found in a number of agricultural insecticide and herbicide products. EPA developed the risk assessments for orthophenylphenol and salts through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Orthophenylphenol and salts are used in applications to treat hard surfaces (walls and floors) and agricultural premises and equipment, air deodorization, commercial and institutional premises, medical premises, residential and public access premises (carpet, hard surfaces, crack and crevice treatment), and material preservatives (stains, paints, metal working fluids, textiles, paper slurries, cement mixtures, glues, adhesives, and household and institutional cleaning products). Sodium-orthophenylphenol is the only chemical in the RED case that is formulated as an inert ingredient.

Sodium-orthophenylphenol is formulated as an inert ingredient in products including: Turf insecticides and herbicides; garden and ornamental insecticides and herbicides; insect repellant for pets; and indoor/outdoor crack and crevice insecticides.

The Agency's risk assessments for orthophenylphenol and salts identified residential and occupational risks of concern for some exposure scenarios. Because limited information is available for some exposure scenarios, conservative assumptions were sometimes used in the risk assessments.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for orthophenylphenol and salts. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is providing an opportunity for interested parties to provide risk management proposals.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to orthophenylphenol and salts, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For orthophenylphenol and salts, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments, few complex issues, and other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for orthophenylphenol and salts. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Orthophenyphenol and salts, Pesticides and pests, 2-Phenylphenol.

Dated: April 19, 2006.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E6–6307 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2004–0162; FRL–8059–2]**

## Napropamide and MCPA; Notice of Receipt of Requests to Amend to Terminate Uses of Napropamide and MCPA Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to amend napropamide and MCPA registrations to terminate certain uses. The requests would terminate MCPA use on rice and grain sorghum as well as terminate napropamide uses on pistachio, walnut, grapefruit, lemon, nectarine, orange, tangerine, tangelo, apricot, cherry, peach, plum, prune, apple, pear, fig, avocado, pomegranate, artichoke, and olive. The requests would not terminate the last napropamide or MCPA products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0162, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to

(7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2004–0162. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** For napropamide: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062, fax number: (703) 308–8041; e-mail address: *fuller.demson@epa.gov*.

For MCPA: Kelly Sherman, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8401; fax: (703) 308–8041; e-mail address: *sherman.kelly@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request dated September 30, 2005 from registrant United Phosphorus, Inc., to terminate certain uses of the following napropamide products: 70506–31, 70506–33, 70506–34, 70506–35, 70506–36, 70506–37, 70506–38, 70506–39, 70506–63, and 70506–64. Napropamide is an herbicide used to control broadleaf weeds and grasses on various fruit and vegetable crops. Specifically, United Phosphorus, Inc. requests use deletions of pistachio, walnut, grapefruit, lemon, nectarine, orange, tangerine, tangelo, apricot, cherry, peach, plum, prune, apple, pear, fig, avocado, pomegranate, artichoke, and olive. These use deletions will not terminate the last pesticide product registered for these uses in the United States. For additional information, refer to *http://www.regulations.gov* with the napropamide legacy docket number: OPP–2004–0162; (69 FR 52261, August 25, 2004) (FRL–7370–9).

This notice also announces receipt by EPA of requests dated August 30, 2004, August 31, 2004, and March 10, 2006 from the MCPA Task Force Three on behalf of registrants Nufarm Limited, Nufarm UK Limited, Nufarm BV, Nufarm Platte Pty Ltd., A.H. Marks &Co. Ltd., and Dow Agrosciences LLC to terminate certain uses of the following MCPA products: 11685–13, 11685–14, 11685–22, 15440–7, 35935–8, 35935–9, 62719–60, 67591–2, 70596–1, 11685–15, 11685–24, 15440–9, and 62719–64. MCPA is an herbicide used to control broadleaf weeds on various grains and grasses. Specifically, the MCPA Task Force Three requests termination of MCPA use on rice and grain sorghum.

These use deletions will not terminate the last pesticide product registered in the United States for these uses. For additional information, refer to *www.regulations.gov* with the MCPA legacy docket number: OPP–2004–0156; (69 FR 35017, June 23, 2004) (FRL–7365–6).

## III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from several registrants to delete certain uses of napropamide and MCPA product registrations. The affected registrations and the registrants making the requests are identified in Tables 1–3 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The napropamide and MCPA registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by a registrant within 30 days of publication of this notice in the **Federal Register**, or the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—NAPROPAMIDE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| Registration No. | Product name | Company | Use Sites |
|---|---|---|---|
| 70506–31 | Devrinol 4–F Selective Herbicide Flowable | United Phosphorus, Inc. | Pistachio, walnut, grapefruit, lemon, nectarine, orange, tangerine, tangelo, apricot, cherry, peach, plum, prune, apple, pear, fig, avocado, pomegranate, artichoke, and olive |
| 70506–33 | Devrinol 2–G Ornamental Selective Herbicide | Do. | Do. |
| 70506–34 | Devrinol 10–G Selective Herbicide | Do. | Do. |
| 70506–35 | Devrinol Technical Selective Herbicide | Do. | Do. |
| 70506–36 | Devrinol 50 DF Selective Herbicide | Do. | Do. |
| 70506–37 | Devrinol 4–F Ornamental Selective Herbicide | Do. | Do. |
| 70506–38 | Devrinol 50-DF Ornamental Herbicide | Do. | Do. |
| 70506–39 | Devrinol Lawn and Ornamental Selective Herbicide | Do. | Do. |

TABLE 2.—MCPA PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| Registration No. | Product name | Company | Use Sites |
|---|---|---|---|
| 11685–13 | MCPA Technical Acid | Nufarm UK Limited | Rice and grain sorghum |
| 11685–14 | MCPA Technical Acid | Do. | Do. |
| 11685–22 | U–46 MCPA Acid | Do. | Do. |
| 11685–15 | Technical MCPA IOE | Do. | Do. |
| 11685–24 | Riverdale Technical MCPA IOE | Do. | Do. |
| 15440–7 | Technical MCPA Acid | A.H. Marks &Co. Limited | Do. |
| 15440–9 | Technical 2-Ethylhexyl Ester of MCPA | A.H. Marks &Co. Limited | Do. |
| 35935–8 | MCPA Technical Acid | Nufarm Limited | Do. |
| 62719–64 | MCPA 2–Ethylhexyl Ester Technical | Dow Agrosciences LLC | Do. |
| 62719–60 | MCPA Acid Technical | Dow Agrosciences LLC | Do. |

TABLE 2.—MCPA PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—CONTINUED

| Registration No. | Product name | Company | Use Sites |
|---|---|---|---|
| 67591–2 | MCPA Acid | Nufarm Platte Pty Ltd | Do. |
| 70596–1 | MCPA (Technical Grade) | Nufarm BV | Do. |

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Tables 1 and 2 of this unit.

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION OR AMENDMENTS

| EPA Company No. | Company name and address |
|---|---|
| 70506 | United Phosphorus Inc.<br>423 Riverview Plaza<br>Trenton, NJ 08611 |
| 11685 | Nufarm UK Limited<br>PMB 239, 7474<br>Creedmoor Road<br>Raleigh, NC 27613 |
| 15440 | A.H. Marks &Co. Limited<br>PMB 239, 7474<br>Creedmoor Road<br>Raleigh, NC 27613 |
| 35935 | Nufarm Limited<br>PMB 239, 7474<br>Creedmoor Road<br>Raleigh, NC 27613 |
| 62719 | Dow Agrosciences LLC<br>PMB 239, 7474<br>Creedmoor Road<br>Raleigh, NC 27613 |
| 70596 | Nufarm BV<br>PMB 239, 7474<br>Creedmoor Road<br>Raleigh, NC 27613 |
| 67591 | Nufarm Platte Pty Ltd<br>PMB 239, 7474<br>Creedmoor Road<br>Raleigh, NC 27613 |

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

## V. Procedures for Withdrawal of Request and Considerations for Reregistration of Napropamide or MCPA

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 26, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation or use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–6302 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0072; FRL–8063–6]**

## Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of AE 0172747 and Its Metabolite AE 1417268 in or on Various Food/Feed Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of AE 0172747 and its metabolite AE 1417268 in or on various food and feed commodities.

**DATES:** Comments must be received on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0072 and pesticide petition number (PP) 5F7009, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.
- **Important Note**: OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be

accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0072. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

Eugene Wilson, Registration Division (7505C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-6103; e-mail address: *wilson.eugene@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the

pesticide including the petition summary.

**New Tolerance**

*(PP) 5F7009.* Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide AE 0172747 (2-[(2-chloro-4-(methylsulfonyl)-3-[2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione), and its metabolite AE 1417268 (2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione) in or on food commodities field corn, grain at 0.02 parts per million (ppm); field corn, forage and stover at 0.5 ppm; sweet corn (K+CWHR) at 0.03 ppm; sweet corn, forage and stover at 1.0 ppm; popcorn, grain at 0.01 ppm; and popcorn, stover at 0.25 ppm. Tolerances are also proposed for AE 1417268 (2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy) methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione) in or on food commodities cattle, goat, hog liver; and sheep and horse meat by-products at 0.5 ppm; and cattle, goat, hog, sheep; and horse kidney at 0.07 ppm.

Independently validated analytical methods suitable for enforcement purposes for plants, plant products, and animal matrices have been submitted for measuring AE 0172747 and all its significant metabolites. Typically, residues are extracted from plant or animal using accelerated solvent extraction. Following concentration, quantitation is by liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) using deuterated internal standards. Metabolite AE 1392936 requires additional clean-up by anion exchange, solid phase extraction prior to quantitation. AE 1417268 in ruminant samples requires a hexane wash prior to quantitation.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 18, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–6295 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50-S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0190; FRL–8062–5**

## Notice of Filing of a Pesticide Petition for Establishment of a Regulation for Residues of Metaldehyde in or on Various Food Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for residues of the molluscicide metaldehyde in or on various food commodities.

**DATES:** Comments must be received on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0190 and pesticide petition number (PP) 5F6995, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

• **Important Note**: OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0190. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Dan Kenny, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-7546; e-mail address: *kenny.dan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. What Action is the Agency Taking?

EPA is printing a summary of this pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Tolerance

*(PP) 5F6995.* Lonza, Inc., 90 Boroline Road, Annandale, NJ 07401, proposes to establish a tolerance for residues of the molluscicide metaldehyde in or on food commodities broccoli, cabbage, mustard (greens) (representing the Brassica (Cole) Crop Group) at 2.5 parts per million (ppm); lemon, grapefruit, and oranges (representing the Citrus Crop Group) at 0.26 ppm; tomato at 0.24 ppm; lettuce at 1.73 ppm; strawberries at 6.25 ppm; and the processed food commodities citrus, oil and dry pulp at 0.26 ppm; and tomato, paste and puree at 0.24 ppm. The analytical method for the determination of the residues of metaldehyde in various food crops was validated with respect to specificity and non-analyte interference, precision (repeatability), accuracy, sensitivity, linearity, of standards, stability of standard solutions and precision (replicate injections) under EN-CAS Analytical Laboratories Study No. 99-0055 (MRID 46010501). The method of detection (GS/MSD) ensured the specificity of the method.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 17, 2006.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–6293 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OPP–2006–0144; FRL–8066–3]**

## Notice of Filing of a Pesticide Petition for an Exemption from the Requirement of Regulations for Residues of Poly(2–Ethylhexyl Acrylate/2–Hydroxyethyl Acrylate/N-(Hydroxymethyl)–2–Methylacrylamide/Methacrylic Acid/Methyl Methacrylate/Styrene), Ammonium Salt in or on All Food Commodities When Used as an Inert Ingredient in Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of regulations for residues of poly (2–ethylhexyl acrylate/2–hydroxyethyl acrylate/N-(hydroxymethyl)–2–methylacrylamide/ methacrylic acid/ methyl methacrylate/styrene), ammonium salt in or on all food commodities when used as an inert ingredient in pesticide products.

**DATES:** Comments must be received on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0144, and pesticide petition number number (PP) 6E7037, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0144. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; phone number: (703)308–8380; e-mail address: *gandhi.bipin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various commodities. EPA has determined that this pesticide petition

contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

**New Exemption from Tolerance**

*PP 6E7037*. E. I. du Pont de Nemours & Company, Inc., 1007 Market St., Wilmington, DE 19898, proposes to establish an exemption from the requirement of a tolerance for residues of poly(2–ethylhexyl acrylate/2–hydroxyethyl acrylate/N-(hydroxymethyl)–2–methylacrylamide/methacrylic acid/methyl methacrylate/styrene), ammonium salt in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 11, 2006.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–6213 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0093; FRL–8063–7]**

## Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Mesotrione in or on Various Food/Feed Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of mesotrione in or on flax, millet, berry group, and cranberry commodities.

**DATES:** Comments must be received on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0093 and pesticide petition number (PP) 6F7023, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0093. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** James Stone, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; phone number: (703) 305-7391; e-mail address:*stone.james@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Tolerance

*PP 6F7023*. Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, proposes to establish tolerances for residues of the herbicide mesotrione in or on food/feed commodities flax, meal/seed at 0.01 parts per million (ppm); millet, forage/grain at 0.01 ppm; millet, hay/straw at 0.02 ppm; Berry group and cranberry at 0.01 ppm. Practical and specific analytical method RAM 366/01 (MRID 45651803) is available for detecting and measuring the level of mesotrione in or one various crop commodities.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 2006.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–6298 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0308; FRL–8063–6]**

## Pronamide; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Massachusetts Department of Agricultural Resources to use the pesticide pronamide (CAS No. 23950–58–5) to treat up to 8,000 acres of cranberries to control dodder. The applicant proposes a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. Due to the urgent nature of the emergency and the very narrow and extremely limited use being requested, EPA has eliminated the public comment period. Nonetheless, interested parties may still contact the Agency with comments about this notice and treatment program.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0308, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the

Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0308. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; fax number: (703) 308–5433; e-mail address: *Sec–18–Mailbox@epa.gov]*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

## II. Background

### *A. What Action is the Agency Taking?*

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Massachusetts Department of Agricultural Resources has requested the Administrator to issue a specific exemption for the use of pronamide on cranberries to control dodder. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that with the widespread adoption of water harvesting, dodder infestations have become practically ubiquitous in the Massachusetts cranberry production area. The detrimental impact of dodder infestations on cranberry yields have been reported widely in scientific journals, extension publications and internal memorandum. Yield losses can range from 12% in slight infestations up to 100% in severe infestations. Currently registered herbicides have not been totally effective, leading to a steady increase in dodder infestations.

The Applicant proposes to make no more than two pre-emergence broadcast applications at a rate of 1.0–2.0 lbs of product per acre (0.5–1.0 lbs acre (a.i.) on 8,000 acres of cranberries. No more than 2.0 lbs of product/acre/season 1.0 lbs a.i. may be made as a result of single or split application.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

As noted above, the Agency is eliminating the comment period due to the urgent nature of an emergency situation and the very narrow and extremely limited use being requested. Nonetheless, interested parties may still contact the Agency with comments about this notice and treatment program.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 17, 2006.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–6288 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2003–0017; FRL–8162–2]**

## Protection of Stratospheric Ozone: Request for Critical Use Exemption Applications for the Years 2008 and 2009

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of solicitation of applications and information on alternatives.

**SUMMARY:** EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2009 and beyond. In addition, those applicants who missed last year's deadline to apply for a critical use exemption for the year 2008 may file a supplemental application in response to the notice. This exemption is an annual exemption and all entities interested in obtaining a critical use exemption must provide EPA with technical and economic information to support a ''critical use'' claim, and must do so by the deadline specified in this notice even if they have previously applied for an exemption. This notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

**DATES:** Applications for the critical use exemption must be postmarked on or before July 10, 2006. Applications for an exemption are due one month earlier to EPA this year to reflect the compressed schedule for review of applications in 2007.

**ADDRESSES:** Applications for the methyl bromide critical use exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention: Marta Montoro/ Methyl Bromide Review Team, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention: Marta Montoro/ Methyl Bromide Review Team, 1310 L St., NW., Room 827L, Washington, DC 20005. EPA also encourages users to submit their applications electronically to Marta Montoro, Stratospheric Protection Division, at *montoro.marta@epa.gov*. If the application is submitted electronically, applicants are requested to fax a signed copy of Worksheet 1 to Marta Montoro at (202) 343–2338 by the application deadline.

**FOR FURTHER INFORMATION CONTACT:**

*General Information:* U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *http://www.epa.gov/ozone/mbr.*

*Technical Information:* Colwell Cook, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (703) 308–8146. E-mail: *cook.colwell@epa.gov.*

*Economic Information:* Elisa Rim, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (703) 308–8123. E-mail: *rim.elisa@epa.gov.*

*Regulatory Information:* Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 343–9321. E-mail: *Montoro.marta@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Applications are due one month earlier to EPA due to the compressed review schedule for critical use exemptions in the year 2007. The 19th Meeting of the Parties is scheduled to be held in September 2007, almost two months earlier than previous meetings of the parties which typically occur in November or December. The EPA will submit a nomination for critical uses earlier than the end of January and will shorten its own review process by one month. In addition, in this notice, EPA is notifying applicants that their application process is being shortened by one month with July 10th as the deadline for applications. EPA also renewed the Information Collection Request (ICR) for the applications on August 31, 2005. The ICR is now valid through August 31, 2008. As a result of the ICR renewal, the format and numbering of the application worksheets changed minimally.

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### I. What do I need to know to respond to this request for applications?

*A. Who can respond to this request for information?*

Entities interested in obtaining a critical use exemption must fill out the application form available at *http://*

*www.epa.gov/ozone/mbr.* The application form may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2009 and beyond and believe there are no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climatic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below).

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (*e.g.*, technical and/or economic feasibility research). The application form for the methyl bromide critical use exemption and other information on research relevant to alternatives must be sent to the addresses specified above or e-mailed to the address specified above. The applicant's signature, which is required in order for EPA to process your application, is on Worksheet 1 of the application. If you submit your application electronically, you must fax a signed copy of worksheet 1 to Marta Montoro at (202) 343–2338.

*B. Whom can I contact to find out if a consortium is submitting an application form for my methyl bromide use?*

Please contact your local, state, regional, or national commodity association to determine whether they plan to submit an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your state agency has chosen to participate, EPA encourages all applicants to first submit their applications to the state regulatory agency, which will then forward them to EPA. The National Pesticide Information Center Web site (*http://ace.orst.edu/info/npic/state1.htm*) provides information on identifying the lead pesticide agency in each state.

*C. How do I obtain an application form for the methyl bromide critical use exemption?*

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA Web site: *http://www.epa.gov/ozone/mbr;*
2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;
3. Hard-copy format at Docket number EPA–HQ–OAR–2003–0017. The Docket is located in room B–102, EPA West Building, U.S. Environmental Protection Agency, 1301 Constitution Ave. NW., Washington, DC 20004. The Docket Office is open from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

*D. What alternatives must applicants address when applying for a critical use exemption?*

To support the assertion that a specific use of methyl bromide is ''critical,'' applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The Parties to the Montreal Protocol have developed an ''International Index'' of methyl bromide alternatives which lists chemical and non-chemical alternatives by crop (*http://www.epa.gov/ozone/mbr/in_alt_in.html*). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: The Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the ''technical potential'' to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (*http://www.teap.org/html/teap_reports.html*). In addition, the U.S. Government has developed the U.S. Index of Methyl Bromide Alternatives, also listed by crop (*http://www.epa.gov/ozone/mbr/us_alt_in.html*). The U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the United States.

Applicants must address technical, regulatory, and economic issues that limit the adoption of ''chemical alternatives'' and combinations of ''chemical'' and ''non-chemical alternatives'' listed for their crop within the ''U.S. Index'' of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of ''non-chemical alternatives'' and combinations of ''chemical'' and ''non-chemical alternatives'' listed for their crop in the ''International Index.''

*E. What portions of the applications will be considered confidential business information?*

The person submitting information to EPA in response to this Notice may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as ''trade secret,'' ''proprietary,'' or ''company confidential.'' Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on Worksheet 6 (formerly Worksheet 5, ''Application Summary'') any information that you wish to claim as confidential business information. Any information on Worksheet 5 is not considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. EPA will place applications that are not confidential business information in the docket in their entirety. Please note that claiming business confidentiality may delay EPA's ability to review your application.

*F. Must I submit a ''Notice of Intent to Apply?''*

A ''Notice of Intent to Apply'' is not required, but would facilitate the application review process. If EPA is aware of the consortia and the individuals who intend to submit applications 30 days before the application deadline, the technical experts will be better positioned to review the application. This notice may be submitted to Marta Montoro at the addresses above.

*G. What if I submit an incomplete application?*

EPA will not accept any applications postmarked after July 10, 2006. If the application is postmarked by the deadline but is incomplete or missing any of the following data elements listed in the ''Re-Application Information Document'' available at *http://www.epa.gov/ozone/mbr* EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. These required elements include Worksheets 1, 2B, 2C, 2D, 4, 5, and 6 (formerly Worksheet 5). EPA will accept applications that are substantially complete with only minor errors. EPA reviewers may also call applicants to further clarify their application, even if it is complete.

All consortia or users who have not applied to EPA in the previous year (2005) must submit an entire completed application with all worksheets.

*H. What if I already previously applied for a critical use exemption?*

In March 2004 and in November 2004, the Parties decided that critical use exemptions would be granted for one year. As a result, users must apply to EPA for critical use exemptions on an annual basis. However, if a user group submitted a complete application to EPA in 2004, the user is only required to submit revised copies of the selected worksheets listed above, though the entire application with all worksheets must be on file with EPA. A list of the worksheets you must fill out each year is detailed above and is also available at *http://www.epa.gov/ozone/mbr.* The remaining worksheets must only be completed if any information has changed since 2005. If a user submitted a critical use exemption application to EPA in 2002, 2003, or 2004 (first, second or third rounds) but did not submit an application in 2005 (fourth round) then all worksheets in the application must be submitted again in their entirety.

**II. What is the Legal Authority for the critical use exemption?**

*A. What is the Clean Air Act (CAA) authority for implementing the critical use exemption to the methyl bromide phaseout?*

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA sections 604(d)(6), 604(e)(3), and 604(h) (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. No. 105–277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

25% reduction (from 1991 baseline) in 1999.

50% reduction in 2001.

70% reduction in 2003.

100% reduction in 2005.

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240) and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005 ''to the extent consistent with the Montreal Protocol'' (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998), section 604(d)(6) of the Clean Air Act).

*B. What is the Montreal Protocol authority for granting a critical use exemption after the methyl bromide phaseout?*

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be ''critical uses.''

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a ''critical use'' determination:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * *. Non-Article 5 Parties [*e.g.*, the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes * * *.

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). A Class I controlled substance that was produced or imported through the expenditure of allowances prior to its phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

**III. How does the U.S. implement the critical use exemption?**

*B. Under the provisions of both the CAA and the Montreal Protocol, the critical use exemption became available to approved users on January 1, 2005. Allowances for subsequent years are authorized through regulations. The critical use exemption process has an international component and a domestic component.*

The projected schedule for the next three years is as follows:

April 26, 2006—Solicit applications for the methyl bromide critical use exemption for 2009 and beyond.

July 10, 2006—Deadline for submitting critical use exemption applications to EPA.

Fall 2006—U.S. Government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. critical use nomination package.

January 31, 2007 but earlier December 2006 deadline strongly encouraged for this year—Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2007—Review of critical use nomination packages by Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC).

Mid 2007—Parties consider TEAP/MBTOC recommendations.

September 2007—Parties authorize critical use exemptions for production and consumption in 2008 (supplemental request) and 2009.

Early-Mid 2008—EPA publishes proposed rule and final rule for 2008 supplemental request, if applicable.

Mid 2008—EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2009.

Late 2008—EPA publishes final rule allocating critical use exemptions in the U.S. for the 2009 control period.

January 1, 2009—Critical use exemption permits limited production and import of methyl bromide for specific uses for the 2009 control period.

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: April 11, 2006.

**Brian J. McLean,**

*Director, Office of Atmospheric Programs.*

[FR Doc. E6–6256 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2006–0348; FRL–8060–8]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 27, 2006 to April 7, 2007, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before May 26, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) no. EPA–HQ–OPPT–2006–0348, by one of the following methods.

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0348. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the 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–OPPT–2006–0348. 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 regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through regulations.gov or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–

0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

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

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

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 27, 2006 to April 7, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 03/27/06 TO 04/07/06

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–06–0382 | 03/27/06 | 06/24/06 | CBI | (S) Dispersing agent for pigments and dyes in links; dispersing agent for pigments and dyes in coatings | (G) Polymer of epichlorohydrin, aromatic diol and an alkyl ether amine |
| P–06–0383 | 03/27/06 | 06/24/06 | CBI | (S) Dispersing agent for pigments and dyes in links; dispersing agent for pigments and dyes in coatings | (G) Polymer of epichlorohydrin, modified aromatic diol and an alkyl ether amine |
| P–06–0384 | 03/27/06 | 06/24/06 | CBI | (S) Dispersing agent for pigments and dyes in links; dispersing agent for pigments and dyes in coatings | (G) Polymer of epichlorohydrin, aromatic diol, alkyl alcohol and a alkyl ether amine |
| P–06–0385 | 03/27/06 | 06/24/06 | CBI | (S) Dispersing agent for pigments and dyes in links; dispersing agent for pigments and dyes in coatings | (G) Polymer of epichlorohydrin, oxide diol and an alkyl ether amine |
| P–06–0386 | 03/27/06 | 06/24/06 | CBI | (G) Polymer solution in an industrial coating. | (S) 1,3-propanediol, 2-butyl-2-ethyl-, polymers with methylated formaldehyde-melamine polymer |
| P–06–0387 | 03/29/06 | 06/26/06 | CBI | (G) Colorant raw material | (G) 1,1-diacisubstituted -2 -(4-aminophenyl) ethanol, monosodium salt |
| P–06–0388 | 03/29/06 | 06/26/06 | CBI | (G) Textile treatment | (G) Perfluoroalkylethylmethacrylate copolymer |
| P–06–0389 | 03/29/06 | 06/26/06 | CBI | (G) Textile treatment/structural material treatment | (G) Perfluoroalkylethyl methacrylate copolymer |
| P–06–0390 | 03/29/06 | 06/26/06 | CBI | (G) Textile treatment | (G) Perfluoroalkyl ethyl methacrylate copolymer |

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 03/27/06 TO 04/07/06—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–06–0391 | 03/29/06 | 06/26/06 | CBI | (G) Industrial coating | (G) Styrene acrylic copolymer |
| P–06–0392 | 04/03/06 | 07/01/06 | CBI | (S) Polyester acrylate oligomer used in ultra violet curable inks and coatings | (G) Polyester acrylate oligomer |
| P–06–0393 | 04/03/06 | 07/01/06 | CBI | (S) Aliphatic urethane acrylate oligomer used in ultra violet curable inks and coatings | (G) Aliphatic urethane acrylate oligomer |
| P–06–0394 | 04/03/06 | 07/01/06 | CBI | (S) Epoxy acrylate oligomer used in ultra violet curable inks and coatings | (G) Epoxy acrylate oligomer |
| P–06–0395 | 04/03/06 | 07/01/06 | CBI | (S) Epoxy acrylate oligomer used in ultra violet curable inks and coatings | (G) Epoxy acrylate oligomer |
| P–06–0396 | 04/03/06 | 07/01/06 | CBI | (S) Epoxy acrylate oligomer used in ultra violet curable inks and coatings | (G) Epoxy acrylate oligomer |
| P–06–0397 | 04/03/06 | 07/01/06 | CBI | (S) Polyester acrylate oligomer used in ultra violet curable inks and coatings | (G) Polyester acrylate oligomer |
| P–06–0398 | 04/03/06 | 07/01/06 | CBI | (S) Polyester acrylate resin used in ultra violet curable inks and coatings | (G) Polyester acrylate resin |
| P–06–0399 | 03/31/06 | 06/28/06 | CBI | (G) Scale inhibitor | (G) C-6 diamine phosphono methylated |
| P–06–0400 | 04/03/06 | 07/01/06 | CBI | (G) Open non-dispersive uses | (G) Silylated urethane prepolymer |
| P–06–0401 | 04/03/06 | 07/01/06 | CIBA Specialty Chemicals Corporation | (S) Pigment for transparent coatings and plastics | (G) (1) dihydromethylaryl pyrrolopyrroledione, (2) dihydromethylaryl alkyloxyphenyl pyrrolopyrroledione, (3) dihydroalkyloxyphenyl pyrrolopyrroledione |
| P–06–0402 | 04/04/06 | 07/02/06 | CBI | (G) Dispersant | (G) Modified polymeric succinimide dispersant |
| P–06–0403 | 04/03/06 | 07/01/06 | CBI | (G) Reactant | (G) Nitrate salt |
| P–06–0404 | 04/04/06 | 07/02/06 | CBI | (G) Intermediate | (G) Terpolymer pibsa |
| P–06–0405 | 04/05/06 | 07/03/06 | CBI | (G) Gellant | (G) Alkanoylamide |
| P–06–0406 | 04/06/06 | 07/04/06 | Septon Company of America | (S) Adhesives; lubricant; emulsion | (S) 2-butenoic acid, 4-amino-4-oxo-, (z)-, polymer with 2,5-furandione, 2-methyl-2-propene and 1h-pyrrole-2,5-dione |
| P–06–0407 | 04/06/06 | 07/04/06 | CBI | (G) Polymer dispersant admixture | (G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), sodium salt |
| P–06–0408 | 04/06/06 | 07/04/06 | CBI | (G) Polymer dispersant admixture | (G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), sodium salt |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 26 NOTICES OF COMMENCEMENT FROM: 03/27/06 TO 04/07/06

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–02–0993 | 03/27/06 | 03/13/06 | (S) Oils, persicaria odorata |
| P–04–0068 | 03/29/06 | 01/13/06 | (S) 3-pentanol, 2,2,4-trimethyl-1-[(2-methyl-2-propenyl)oxy]- |
| P–04–0135 | 04/03/06 | 03/09/06 | (G) Polyester urethane |
| P–04–0181 | 03/27/06 | 05/16/04 | (G) Phenolic resin |
| P–04–0287 | 03/30/06 | 03/07/06 | (S) Phosphonic acid, (4-morpholinylmethylene)bis-, sodium salt |
| P–04–0747 | 03/30/06 | 03/19/06 | (G) Propylene glycol diethylhexanoate |
| P–05–0177 | 03/30/06 | 03/22/06 | (G) Alcohol reaction products with hexakis(methoxymethyl)melamine |
| P–05–0547 | 04/04/06 | 03/15/06 | (G) Aromatic polyimide |

II. 26 NOTICES OF COMMENCEMENT FROM: 03/27/06 TO 04/07/06—Continued

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–05–0717 | 03/27/06 | 03/14/06 | (S) Poly(oxy-1,2-ethanediyl),.alpha.-(3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5-yl)-.omega.-hydroxy- |
| P–05–0794 | 04/03/06 | 03/16/06 | (G) Aromatic diacid, polymer with aromatic anhydrides, alkanetriol, alkyl acid, alkanediol, compound with 2-(dimethylamino)ethanol |
| P–06–0123 | 03/24/06 | 03/05/06 | (G) Cuprate[[[[[[(substituted)sulfonaphtalenyl]-azo]-substitutedphenyl]-sulfonyl]-ethyl]-glycinato], sodium salts |
| P–06–0132 | 04/04/06 | 03/26/06 | (G) 2-propenoic acid, aklyl-, polymer with ethenylbenzene, alkyl propenoates, 2-hydroxyalkyl propenoate, alkylperoxoate-initiated, compounds with aminoalkanol |
| P–06–0133 | 04/04/06 | 03/26/06 | (G) 2-propenoic acid, alkyl-, alkyl ester, polymer with alkyl propenoate and oxiranylalkyl propenoate |
| P–06–0143 | 03/28/06 | 03/20/06 | (G) Aliphatic polyurethane |
| P–06–0145 | 03/27/06 | 03/09/06 | (G) Polyoxyethylene polyoxyalkylene monoalkenyl ether |
| P–06–0175 | 04/05/06 | 03/09/06 | (G) Fatty acid polymer with aliphatic diol and aromatic diacid |
| P–06–0182 | 04/04/06 | 03/19/06 | (G) Alkyl ester |
| P–06–0186 | 03/27/06 | 03/22/06 | (G) Styrene-methacrylate copolymer, metal salt |
| P–06–0192 | 03/31/06 | 03/20/06 | (S) Tall-oil pitch, unsaponifiables, distn. lights |
| P–06–0193 | 04/03/06 | 03/20/06 | (S) Tall-oil pitch, unsaponifiables, distn. middle fraction |
| P–06–0194 | 03/31/06 | 03/20/06 | (S) Tall-oil pitch, unsaponifiables, distn. residues |
| P–94–0566 | 03/27/06 | 03/16/06 | (G) Polyester isocyanate polymer |
| P–94–0902 | 03/27/06 | 03/17/06 | (S) 2-dodecyl-1-hexadecanol |
| P–94–0954 | 03/27/06 | 03/16/06 | (G) Polyester isocyanate polymer |
| P–95–0068 | 04/03/06 | 03/21/06 | (G) Polyester isocyanate polymer |
| P–96–0435 | 04/04/06 | 03/16/06 | (G) Isocyanate-terminated polyester polyurethane prepolymer |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 18, 2006.

**LaRona M. Washington,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6–6101 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–S**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Privacy Act of 1974; Publication of Notice of Proposed New Systems of Records and Amendment of Systems To Add New System Managers

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice; publication of notice of proposed new systems of records and amendment of systems to add new system managers and new routine uses.

**SUMMARY:** This notice proposes two new systems of records, amends three existing systems of records to include a new system manager, amends one existing system to add two new routine uses and amends Appendix A to reflect current office names and addresses.

**DATES:** The changes to the existing systems of records are effective on April 26, 2006. The proposed new systems of records and routine uses will become effective, without further notice, on June 26, 2006 unless comments dictate otherwise.

**ADDRESSES:** Written comments may be sent to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Publications Center by calling 1–800–699–3362.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel (202) 663–4668 (voice) or Kathleen Oram, Senior Attorney (202) 663–4681 (voice) or (202) 663–7026 (TDD).

**SUPPLEMENTARY INFORMATION:** The Equal Employment Opportunity Commission recently implemented a new electronic tracking system for its employment discrimination charge data. As part of that implementation, the Commission is amending three existing systems of records, EEOC–1, Age and Equal Pay Act Discrimination Case Files, EEOC–3, Title VII and Americans With Disabilities Act Discrimination Case Files, and EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records, to add the Director of the Office of Field Programs as a system manager. This addition provides a Headquarters system manager for EEOC–1 and EEOC–3 who will address questions concerning access to tracking data at EEOC headquarters. In addition, the Director of the Office of Field Programs has managerial authority over the federal sector hearings process at EEOC, and is added as a system manager in EEOC/GOVT–1 of the hearings records and the hearings data in the new database.

The Commission proposes to add two new routine uses to EEOC–16, Office of Inspector General Investigative Files. The President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) are establishing peer review processes that are designed to provide qualitative measurement against the Inspector General community standards to ensure that adequate internal and management procedures are maintained. The peer reviews are designed to foster high quality investigations and investigative processes and promote consistency in investigative standards and practices within the Inspector General community. EEOC's Office of Inspector General intends to participate in the peer review processes. Proposed routine use g. would allow disclosure of information to authorized officials within the PCIE, the ECIE, the Department of Justice and the Federal Bureau of Investigation for the purpose of conducting qualitative assessment reviews of the Office of Inspector General's investigative operations. Proposed routine use h. would allow the disclosure of information to the PCIE and the ECIE for their preparation of

reports to the President and Congress on the activities of the Inspectors General.

The Commission proposes to add a new system of records, EEOC–19, Revolving Fund Registrations. The Commission's Revolving Fund was established by Congress to permit EEOC to provide equal employment opportunity training and technical assistance at cost to employers and individuals and use the proceeds for further training and technical assistance. The Revolving Fund proposes to keep a database of information about the persons who have attended its training or technical assistance programs. The registration information is used by Revolving Fund staff for the program in connection with which it was received and for mailings about future programs. Three routine uses are proposed for the new system.

The Commission also proposes to add a new system of records, EEOC–20, RESOLVE Program Records. RESOLVE is EEOC's internal alternative dispute resolution program. The RESOLVE Program provides a forum to EEOC employees for the informal resolution of a variety of workplace disputes as an alternative to the procedures that employees traditionally use to resolve disputes, such as the EEO complaint process and the negotiated and administrative grievance procedures. RESOLVE covers a variety of common workplace disputes and issues, such as terms and conditions of employment, requests for reasonable accommodation and allegations of employment discrimination. Three routine uses are proposed for this new system.

The proposed routine uses for EEOC–16, Office of Inspector General Investigative Files, and the two proposed new systems of records meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosure pursuant to these routine uses will not result in any unwarranted adverse effects on personal privacy.

Finally, the Commission has amended Appendix A to reflect the current names and addresses of its offices in the field.

For the Commission.

**Cari M. Dominguez,**

*Chair.*

Accordingly, it is proposed that:

1. EEOC–1, Age and Equal Pay Act Discrimination Case Files, most recently published at 67 FR 49338, 49339 (July 30, 2002), is amended as set forth below.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of the office in the field where the charge was filed (see Appendix A). Director of the Office of Field Programs, 1801 L Street, NW., Washington, DC 20507. Director of the Office of Federal Operations, 1801 L Street, NW., Washington, DC 20507 (only for complaints filed under section 321 of the Government Employees Right Act of 1991).

2. EEOC–3, Title VII and Americans With Disabilities Act Discrimination Case Files, most recently published at 67 FR 49338, 49341 (July 30, 2002), is amended as set forth below.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of the office in the field where the charge was filed (see Appendix A). Director of the Office of Field Programs, 1801 L Street, NW., Washington, DC 20507.

3. EEOC–16, Office of Inspector General Investigative Files, most recently published at 67 FR 49338, 49351 (July 30, 2002), is amended as set forth below.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

g. To disclose information to authorized officials of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), the Department of Justice, and the Federal Bureau of Investigation for the purpose of conducting qualitative assessment reviews of the Office of Inspector General's investigative operations.

h. To disclose information to authorized officials of the PCIE and the ECIE for their preparation of reports to the President and the Congress on the activities of the Inspectors General.

4. EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records, most recently published at 67 FR 49338, 49354 (July 30, 2002), is amended as set forth below.

**SYSTEM MANAGER(S) AND ADDRESS:**

Within the agency or department where the complaint of discrimination was filed, the system manager is the Director of the Office of Equal Employment Opportunity or other official designated as responsible for the administration and enforcement of equal employment opportunity laws and regulations within the agency or department.

Where an individual has requested a hearing, the system manager of hearing records is the Director of the Office of Field Programs, 1801 L Street, NW., Washington, DC 20507.

Where an EEO complaint or final negotiated grievance decision has been appealed to EEOC or an individual has petitioned EEOC for review of a decision of the Merit Systems Protection Board, the system manager of the appeal or petition file is the Director, Office of Federal Operations, 1801 L Street, NW., Washington, DC.

5. EEOC–19, Revolving Fund Registrations, is added as set forth below:

## EEOC–19

**SYSTEM NAME:**

Revolving Fund Registrations.

**SYSTEM LOCATION:**

Revolving Fund Division, Office of Field Programs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who register for or attend EEOC Revolving Fund programs, courses and conferences and who purchase publications and products.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains the names, job titles, company, organization or agency names, business addresses and phone numbers, email addresses, any reasonable accommodation requested, and attendance or purchase dates. Some of the records may contain payment information, the industry of the company, and the size of the establishment.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 2000e–4(k).

**PURPOSE(S):**

These records are maintained for the purpose of administering Revolving Fund programs and publicizing future programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used to:

a. Send mailings to registrants and attendees advertising future Revolving Fund programs.

b. To provide information to a congressional office from the record of the individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an

administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in a computer database.

**RETRIEVABILITY:**

These records are indexed by the names of the registrants or attendees and by company, organization or agency name.

**SAFEGUARDS:**

Access to and use of these records is limited, through use of access codes and entry logs, to those whose official duties require access.

**RETENTION AND DISPOSAL:**

These records are kept in the computer database indefinitely.

**SYSTEM MANAGER AND ADDRESS:**

Director, Revolving Fund Division, Office of Field Programs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**NOTIFICATION PROCEDURE:**

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORDS PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Information contained in this system is obtained from the registrant or attendee.

6. EEOC–20, RESOLVE Program Records, is added as set forth below:

## EEOC–20

**SYSTEM NAME:**

RESOLVE Program Records.

**SYSTEM LOCATION:**

Office of the Chief Mediation Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EEOC employees and applicants who request alternative dispute resolution during the counseling or investigative process of their EEO complaints against EEOC and EEOC employees who contact the RESOLVE program for alternative dispute resolution of disputes occurring in their EEOC employment.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains the records generated in the course of receiving and attempting to resolve disputes brought to the RESOLVE program, including, as appropriate, intake interview notes, mediation scheduling notices, the mediator's outcome form, and settlement agreements.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 571–574; 44 U.S.C. 3101; 29 CFR part 1614.

**PURPOSE(S)**

These records are maintained for the purpose of administering EEOC's RESOLVE Program, which provides a forum for the informal resolution of a variety of workplace disputes as an alternative to the formal procedures that employees traditionally use to resolve disputes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used to:

a. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To provide information to a congressional office from the record of the individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and on a computer database.

**RETRIEVABILITY:**

These records are indexed by the names of the employee or applicant.

**SAFEGUARDS:**

The records are maintained in locked metal filing cabinets to which only authorized personnel have access. Access to and use of computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

**RETENTION AND DISPOSAL:**

These records are maintained for one year after the complaint or dispute matter brought to RESOLVE is closed and then transferred to the Federal Records Center where they are destroyed after three years.

**SYSTEM MANAGER AND ADDRESS:**

Chief Mediation Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, D.C. 20507.

**NOTIFICATION PROCEDURE:**

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORDS PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES**

Information contained in this system is obtained from the employee or applicant, the Office of Equal Opportunity, and the mediator.

## Appendix A:

U.S. EEOC Albuquerque Area Office (Phoenix District), 505 Marquette, NW., Suite 900, Albuquerque, NM 87102.

U.S. EEOC Atlanta District Office, 100 Alabama Street, SW., Suite 4R30, Atlanta, GA 30303.

U.S. EEOC Baltimore Field Office (Philadelphia District), City Crescent Building, 10 South Howard Street, 3rd Floor, Baltimore, MD 21201.

U.S. EEOC Birmingham District Office, Ridge Park Place, 1130 22nd Street South (Suite 2000), Birmingham, AL 35205–2397.

U.S. EEOC Boston Area Office (New York District), John F. Kennedy Federal Building, Government Center, Fourth Floor, Room 475, Boston, MA 02203–0506.

U.S. EEOC Buffalo Local Office (New York District), 6 Fountain Plaza, Suite 350, Buffalo, NY 14202.

U.S. EEOC Charlotte District Office, 129 West Trade Street, Suite 400, Charlotte, NC 28202.

U.S. EEOC Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, IL 60661.

U.S. EEOC Cincinnati Area Office (Indianapolis District), 550 Main Street, Suite 10019, Cincinnati, OH 45202–5202.

U.S. EEOC Cleveland Field Office (Philadelphia District), 1240 E. 9th Street, Suite 3001, Cleveland, OH 44199.
U.S. EEOC Dallas District Office, 207 S. Houston Street, 3rd Floor, Dallas, TX 75202–4726.
U.S. EEOC Denver Field Office (Phoenix District), 303 E. 17th Avenue, Suite 510, Denver, CO 80203.
U.S. EEOC Detroit Field Office (Indianapolis District), 477 Michigan Avenue, Room 865, Detroit, MI 48226–2523.
U.S. EEOC El Paso Area Office (Dallas District), 300 East Main Street (Suite 500), El Paso, TX 79901–1331.
U.S. EEOC Fresno Local Office (Los Angeles District), 1265 West Shaw Avenue, Suite 103 Fresno, CA 93711.
U.S. EEOC Greensboro Local Office (Charlotte District), 2303 West Meadowview Road (Suite 201), Greensboro, NC 27405.
U.S. EEOC Greenville Local Office (Charlotte District), 301 North Main Street (Suite 1402) Greenville, SC 29601.
U.S. EEOC Honolulu Local Office (Los Angeles District), 300 Ala Moana Boulevard, Room 7–127, PO Box 50082, Honolulu, HI 96850–0051.
U.S. EEOC Houston District Office, 1919 Smith Street, 7th Floor, Houston, TX 77002–8049.
U.S. EEOC Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204–4203.
U.S. EEOC Jackson Area Office (Birmingham District), 100 West Capitol Street (Suite 207), Jackson, MS 39269.
U.S. EEOC Kansas City Area Office (St. Louis District), 400 State Avenue, Suite 905, Kansas City, KS 66101.
U.S. EEOC Little Rock Area Office (Memphis District), 820 Louisiana Street, Suite 200, Little Rock, AR 72201.
U.S. EEOC Los Angeles District Office, 255 E. Temple Street, 4th Floor, Los Angeles, CA 90012.
U.S. EEOC Louisville Area Office (Indianapolis District), 600 Dr. Martin Luther King Jr. Place, Suite 268, Louisville, KY 40202.
U.S. EEOC Memphis District Office, 1407 Union Avenue, Suite 621, Memphis, TN 38104.
U.S. EEOC Miami District Office, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, FL 33131.
U.S. EEOC Milwaukee Area Office (Chicago District), 310 West Wisconsin Avenue, Suite 800, Milwaukee, WI 53203–2292.
U.S. EEOC Minneapolis Area Office (Chicago District), 330 South Second Avenue, Suite 430, Minneapolis, MN 55401–2224.
U.S. EEOC Nashville Area Office (Memphis District), 50 Vantage Way, Suite 202, Nashville, TN 37228–9940.
U.S. EEOC Newark Area Office (New York District), 1 Newark Center, 21st Floor, Newark, NJ 07102–5233.
U.S. EEOC New Orleans Field Office (Houston District), 701 Loyola Avenue, Suite 600, New Orleans, LA 70113–9936.
U.S. EEOC New York District Office, 33 Whitehall Street, 5th Floor, New York, NY 10004.
U.S. EEOC Norfolk Local Office (Charlotte District), Federal Building, 200 Granby Street (Suite 739), Norfolk, VA 23510.
U.S. EEOC Oakland Local Office (San Francisco District), 1301 Clay Street, Suite 1170–N, Oakland, CA 94612–5217.
U.S. EEOC Oklahoma City Area Office (St. Louis District), 210 Park Avenue, Suite 1350, Oklahoma City, OK 73102.
U.S. EEOC Philadelphia District Office, 21 South 5th Street, Suite 400, Philadelphia, PA 19106–2515.
U.S. EEOC Phoenix District Office, 3300 N. Central Avenue, Suite 690, Phoenix, AZ 85012–2504.
U.S. EEOC Pittsburgh Area Office (Philadelphia District), 1001 Liberty Avenue, Suite 300, Pittsburgh, PA 15222–4187.
U.S. EEOC Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, NC 27608–2129.
U.S. EEOC Richmond Local Office (Charlotte District), 830 East Main Street (Suite 600), Richmond, VA 23219.
U.S. EEOC San Antonio Field Office (Dallas District), 5410 Fredericksburg Road, Suite 200, San Antonio, TX 78229–3555.
U.S. EEOC San Diego Local Office (Los Angeles District), 401 B Street (Suite 510), San Diego, CA 92101.
U.S. EEOC San Francisco District Office, 350 Embarcadaro (Suite 500), San Francisco, CA 94105–1687.
U.S. EEOC San Jose Local Office (San Francisco District), 96 North 3rd Street (Suite 200), San Jose, CA 95112.
U.S. EEOC San Juan Local Office (Miami District), 525 F.D. Roosevelt Ave., Plazas Las Americas, Suite 1202, San Juan, Puerto Rico 00918–8001.
U.S. EEOC Savannah Local Office (Atlanta District), 410 Mall Boulevard, Suite G, Savannah, GA 31406–4821.
U.S. EEOC Seattle Field Office (San Francisco District), Federal Office Building, 909 First Avenue (Suite 400), Seattle, WA 98104–1061.
U.S. EEOC St. Louis District Office, Robert A. Young Building, 1222 Spruce Street, Room 8.100, St. Louis, MO 63103.
U.S. EEOC Tampa Field Office (Miami District), 501 East Polk Street (Room 1000), Tampa, FL 33602.
U.S. EEOC Washington Field Office, 1801 L Street, NW., Suite 100, Washington, DC 20507.

[FR Doc. E6–6232 Filed 4–25–06; 8:45 am]
BILLING CODE 6570–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 19, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 26, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0859.

*Title:* Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 80.

*Estimated Time Per Response:* 63–125 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 6,280 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Commission is submitting this information collection to OMB as an extension (no change in reporting requirements) in order to obtain the full three-year clearance from them.

The Commission published a Public Notice in November 1998 which established various procedural guidelines related to the Commission's processing of petitions for preemption pursuant to Section 253 of the Communications Act of 1934, as amended. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

*OMB Control No.:* 3060–0876.

*Title:* USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 1,312.

*Estimated Time Per Response:* 20–32 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 41,840 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* Section 54.703 states that industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors. Sections 54.719 through 54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. The information is used by the Commission to select USAC'S Board of Directors and to ensure that requests for review are filed properly with the Commission.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–6265 Filed 4–25–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

April 20, 2006.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0076.

*OMB Approval Date:* 4/17/2006.

*Expiration Date:* 9/30/2007.

*Title:* Common Carrier Annual Employment Report.

*Form No.:* FCC form 395.

*Estimated Annual Burden:* 1,100 responses; 1,100 total annual burden hours; 1 hour per respondent.

*Needs and Uses:* This submission revised an existing collection. The Commission replaced the citation to 47 CFR 21.307 on the FCC form 395, Section V, with the citations to 47 CFR 101.4 and 101.311. The Commission plans to revise reporting classification categories on the FCC form 395 upon implementation of the revised classification categories on the EEOC's EEO–1 report.

*OMB Control No.:* 3060–0755.

*OMB Approval Date:* 3/29/2006.

*Expiration Date:* 3/31/2009.

*Title:* Sections 59.1 through 59.4, Infrastructure Sharing.

*Form No.:* N/A.

*Estimated Annual Burden:* 1,425 responses; 2,325 total annual burden hours; 2–24 hours per respondent.

*Needs and Uses:* Section 259 requires incumbent LECs to file any arrangements showing the conditions under which they share infrastructure per section 259. Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. The Commission also requires incumbent LECs to provide 60-day notices prior to terminating section 259 agreements.

*OMB Control No.:* 3060–0400.

*OMB Approval Date:* 3/30/2006.

*Expiration Date:* 3/31/2009.

*Title:* Tariff Review Plan.

*Form No.:* N/A.

*Estimated Annual Burden:* 40 responses; 2,440 total annual burden hours; 61 hours per respondent.

*Needs and Uses:* Certain local exchange carriers are required annually to submit Tariff Review Plans in partial fulfillment of cost support material required by 47 CFR part 61. The information is used by the FCC and the public to determine the justness and reasonableness of rates, terms and conditions in tariffs as required by the Communications Act of 1934, as amended.

*OMB Control No.:* 3060–0512.

*OMB Approval Date:* 4/5/2006.

*Expiration Date:* 4/30/2009.

*Title:* The ARMIS Annual Summary Report.

*Form No.:* FCC 43–01.

*Estimated Annual Burden:* 126 responses; 11,088 total annual burden hours; 88 hours per respondent.

*Needs and Uses:* This collection was revised to remove one row of data from the report. The Automated Reported Management Information System (ARMIS) was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS Report 43–01 contains financial and operating data and is used to monitor the incumbent local exchange carriers (''ILECs'') and to perform routine analyses of costs and revenues.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. E6–6266 Filed 4–25–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (''Independent Panel'' or ''Panel'') will

hold its next meeting on May 12, 2006 at 10 a.m. at the Commission Meeting Room of the FCC, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

**DATES:** May 12, 2006 at 10 a.m.

**ADDRESSES:** Commission Meeting Room, FCC, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fowlkes, Designated Federal Officer of the FCC's Independent Panel at 202–418–7452 or e-mail: *lisa.fowlkes@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The Panel will discuss possible issues, findings and recommendations to be included in its Final Report which is due to the Commission by June 15, 2006. The report will address the impact of Hurricane Katrina on communications infrastructure, including public safety communications, and recommendations for improving disaster preparedness, network reliability and communications among first responders. The Panel may take action on any of the issues raised during the meeting.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Real Audio access to the meeting will be available at *http://www.fcc.gov*. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. To request accommodations, send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Include a description of the accommodation you will need with as much detail as possible. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

The public may submit written comments before the meeting to: Lisa M. Fowlkes, the FCC's Designated Federal Officer for the Independent Panel by e-mail: *lisa.fowlkes@fcc.gov* or U.S. Postal Service Mail (Lisa M. Fowlkes, Designated Federal Officer, Hurricane Katrina Independent Panel, Federal Communications Commission, 445 12th Street, SW., Room 7–C737, Washington, DC 20554).

Further information regarding the Independent Panel, including publicly available documents, may be found at the Panel's Web site at *http://www.fcc.gov/eb/hkip*. In addition, publicly available documents related to the Panel are available for inspection and copying at the FCC's Public Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. E6–6267 Filed 4–25–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

*Agreement No.:* 011602–007.

*Title:* Grand Alliance Agreement II.

*Parties:* Hapag-Lloyd Container Linie GmbH/CP Ships (UK) Limited/CP Ships USA LLC; Nippon Yusen Kaisha; and Orient Overseas Container Line, Inc./Orient Overseas Container Line Limited/Orient Overseas Container Line (Europe) Limited.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment removes P&O Nedlloyd Limited and P&O Nedlloyd, B.V. as parties to the agreement.

*Agreement No.:* 011665–008.

*Title:* Specialized Reefer Shipping Association Agreement.

*Parties:* NYKLauritzenCool AB and Seatrade Group N.V.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment adds authority for the parties to develop and manage quality assurance and other operational and/or marketing programs, to enter into arrangements with other agreements to manage the foregoing programs that may be implemented by those other agreements, to exchange certain commercial information, and to meet with shippers to discuss matters of mutual interest. The amendment also adds a yearly membership fee and restates the agreement.

*Agreement No.:* 011701–009.

*Title:* Pacific East Coast Express Agreement.

*Parties:* A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd./China Shipping Container Lines (Hong Kong) Co., Ltd.; and CMA CGM, S.A.

*Filing Party:* Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW; Washington, DC 20036.

*Synopsis:* The amendment substitutes A.P. Moller Maersk A/S for P&O Nedlloyd Limited and P&O Nedlloyd B.V.

*Agreement No.:* 011847–003.

*Title:* Pacific Gulf Express Agreement.

*Parties:* A.P. Moller Maersk A/S and CMA CGM, S.A.

*Filing Party:* Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW; Washington, DC 20036.

*Synopsis:* The amendment substitutes A.P. Moller Maersk A/S for P&O Nedlloyd Limited and P&O Nedlloyd B.V.

*Agreement No.:* 011852–022.

*Title:* Maritime Security Discussion Agreement.

*Parties:* China Shipping Container Lines, Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Maher Terminals, Inc.; Marine Terminals Corp.; Massachusetts Port Authority; P&O Ports North America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Virginia International Terminals; and Yusen Terminals, Inc.

*Filing Parties:* Carol N. Lambos; The Lambos Firm; 29 Broadway; 9th Floor; New York, NY 10006, and Charles T. Carroll, Jr.; Carroll & Froelich, PLLC; 2011 Pennsylvania Avenue, NW.; Suite 301; Washington, DC 20006.

*Synopsis:* The amendment deletes South Carolina Ports Authority, the Port of Tacoma, and Stevedoring Services of America, Inc. as parties to the agreement. It also reflects Yang Ming's agent as Yang Ming (America) Corp.

By Order of the Federal Maritime Commission.

**Bryant L. Vanbrakle,**

*Secretary.*

[FR Doc. E6–6282 Filed 4–25–06; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 018304N.
*Name:* Comis International Inc.
*Address:* 690 Knox Street, Torrance, CA 90502.
*Date Revoked:* April 17, 2006.
*Reason:* Surrender license voluntarily.

*License Number:* 001744F.
*Name:* Export International, Inc. dba Houston Export International.
*Address:* 8106 Pella, Houston, TX 77036.
*Date Revoked:* March 31, 2006.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019045N.
*Name:* Fleet Global Logistics (U.S.A.) Inc.
*Address:* 4144 East Wood Harbor Ct., Ste. 1, Richmond, VA 23231.
*Date Revoked:* April 1, 2006.
*Reason:* Failed to maintain a valid bond.

*License Number:* 003306F.
*Name:* Ford International Forwarding, Inc.
*Address:* 2 Washington Place, Tarrytown, NY 10591.
*Date Revoked:* April 17, 2006.
*Reason:* Surrendered license voluntarily.

*License Number:* 017848F.
*Name:* K2 International, LLC dba All-Ways Cargo Services.
*Address:* 2782 Eagandale Blvd., Eagan, MN 55121.
*Date Revoked:* March 9, 2006.
*Reason:* Surrendered license voluntarily.

*License Number:* 004657N.
*Name:* Ocean Transportation Services, LLC.
*Address:* 500 Union Street, Suite 701, Seattle, WA 98101–2369.
*Date Revoked:* April 13, 2006.
*Reason:* Surrendered license voluntarily.

**Peter J. King,**
*Deputy Director, Bureau of Certification and Licensing.*
[FR Doc. E6–6279 Filed 4–25–06; 8:45 am]
BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 018334N | Continental Logistic Service Inc., 325 W. 131st Street, Los Angeles, CA 90061 | March 31, 2006. |
| 016105N | Thomas M. McGovern dba, Scotia Ocean Services Ltd., 2810 Silver Falls, Kingwood, TX 77339 | January 15, 2006. |

**Peter J. King,**
*Deputy Director, Bureau of Certification and Licensing.*
[FR Doc. E6–6278 Filed 4–25–06; 8:45 am]
BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary Licenses; Correction

In the **Federal Register** Notice published April 5, 2006 (71 FR 65) reference to the name of Protrans International, Inc. is corrected to read:

''ProTrans International, Inc.''

Dated: April 21, 2006.
**Bryant L. VanBrakle,**
*Secretary.*
[FR Doc. E6–6280 Filed 4–25–06; 8:45 am]
BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Summit Logistics, Inc., 15215 S. 48th Street, No. 161, Phoenix, AZ 85044, Officers: Chris Kim, President, (Qualifying Individual), Rick An, Vice President

Lenex Global Xpress, Inc., 2825 Plaza Del Amo, Unit 154, Torrance, CA 90503, Officer: Steven Joon Kang, President, (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Intership Logistics, LLC, 6426 NW. 5th Way, Fort Lauderdale, FL 33309, Officers: Mark McGovern, Vice President, (Qualifying Individual), David Buonerba, President

Cruise Logistics LLC, 11013 NW. 30th Street, Ste. 100, Miami, FL 33172, Officer: Jesper H. Dahl, Managing Member, (Qualifying Individual)

Star Global (North America), Ltd., 149–35 77th Street, Jamaica, NY 11434, Officers: Anthony Chan, President, (Qualifying Individual), Dr. H. Henning Maier, Director

River Bend Transport Company 300 Three Rivers Parkway, North Bend, OH 45052, Officers: Sean G. Burke, Vice President, (Qualifying Individual), Kevin D. Adams, President

Horizons Worldwide International Forwarder Inc., dba Atlas Logistics (USA) Inc., 6675 Eastland Road, Middleburg Hts, OH 44130, Officer: Edward M. Zarefoss, President, (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary

Applicant: AES Worldwide, 16040 Christensen Road, #306, Tukwila, WA 98188, Officers: Debra K. Johnson, Vice President, (Qualifying Individual), Anne Schwieger, President

Dated: April 21, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6–6281 Filed 4–25–06; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 11, 2006.

**A. Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

*1. The Robin and Cherie Arkley Revocable Algiers Bancorp Stock Trust, Eureka, California, with Robin P. Arkley II and Cherie P. Arkley,* Eureka, California, as trustees to acquire 57 percent of the voting shares; Allison E. Arkley Trust no. 5, Eureka, California, Calvin Richard Jones, managing member of CTT, LLC, Eureka, California, and John L. Piland as trustees to acquire 19 percent of the voting shares; and Elizabeth A. Arkley Trust no. 5, Calvin Richard Jones, managing member of CTT, LLC, Eureka, California, John L. Piland as trustees to acquire 19 percent of the voting shares; and Jack J. Mendheim and Stephanie C. Medheim, Folsom, Louisiana, to acquire 5 percent of the voting shares all with respect to Algiers Bancorp, Inc., Baton Rouge, Louisiana, and all to thereby indirectly acquire voting shares of Statewide Bank, Terrytown, Louisiana.

**B. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Paul C. Bauman and Emily A. Bauman,* both of Tulsa, Oklahoma; and Henry C. Bauman, III, Tyler, Texas; to acquire voting shares of United Capital Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of Wyandotte, both of Wyandotte, Oklahoma.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. James E. Bethard and Robert E. Bethard,* both of Coushatta, Louisiana; and Suzanne B. Hearne, Shreveport, Louisiana; as trustees of Voting Trust Agreement, to retain ownership of 77.58 percent of the voting shares of Coushatta Bancshares, Inc., and thereby indirectly retain voting shares of Bank of Coushatta, both of Coushatta, Louisiana.

Board of Governors of the Federal Reserve System, April 21, 2006.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E6–6257 Filed 4–25–06; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 May 22, 2006.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Enterprise Financial Services Corp.*, Clayton, Missouri; to acquire 100 percent of the voting shares of NorthStar Bancshares, Inc., and thereby indirectly acquire NorthStar Bank, National Association, both of North Kansas City, Missouri.

Board of Governors of the Federal Reserve System, April 21, 2006.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E6–6258 Filed 4–25–06; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans. No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **Transactions Granted Early Termination—03/27/2006** | | | |
| 20060740 | NCI Building Systems, Inc | Michael E. Heisley, Sr | Robertson-Ceco II Corporation. |
| 20060753 | HRH Prince Alwaleed Bin Talal Bin Abdulaziz Alsaud. | Fairmont Hotels & Resorts, Inc | Fairmont Hotels & Resorts Inc. |
| 20060754 | Colony Investors VII, L.P | Fairmont Hotels & Resorts, Inc | Fairmont Hotels & Resorts, Inc. |
| 20060762 | News Corporation | Time Warner Inc | Turner Regional Entertainment Network, Inc. |
| 20060765 | ASP IV Alternative Investments, L.P | Katharine Rawling and John Rawling | Robertson Aviation, LLC. |
| 20060766 | ASP IV Alternative Investments, L.P | S. Harry Robertson | Robertson Aviation, LLC. |
| 20060767 | ASP IV Alternative Investments, L.P | Nancy Jean Robertson | Robertson Aviation, LLC. |
| 20060770 | Fidelity Investors III Limited Partnership. | FMR Corp | Pro-Build Holdings Inc. |
| 20060771 | FILP Capital Reserves Limited Partnership. | FMR Corp | Pro-Build Holdings Inc., The Strober Organization, Inc. |
| 20060780 | FRX Onshore, L.P | Charles J. Packard | Industrial Power Generating Corporation. |
| 20060801 | Apollo Investment Fund V, L.P | SOURCECORP, Incorporated | SOURCECORP, Incorporated. |
| 20060813 | Air Products and Chemicals, Inc | Tomah Holdings, Inc | Tomah Holding, Inc. |
| 20060818 | Merrill Lynch & Co., Inc | Mr. O. Gene Bicknell | NPC International, Inc. |
| 20060824 | Rentech, Inc | Agrium Inc | Royster-Clark Nitrogen, Inc. |
| 20060827 | Sterling Bancorp | Randstad Holding nv | PL Services, L.P. |
| **Transactions Granted Early Termination—03/28/2006** | | | |
| 20060728 | Community Health System, Inc | Baptist Health System, Inc | Baptist Health Centers, Inc. |
| 20060817 | The Hearst Family Trust | Marc Ladreit de Lacharriere | Fimalac, Inc. |
| **Transactions Granted Early Termination—03/29/2006** | | | |
| 20060751 | Kerry Group Plc | Ampersand 1999 Limited Partnership | Nuvex Ingredients, Inc. |
| 20060840 | Asurion Corporation | Glen and Joan Hammer | Warranty Corporation of America. |
| **Transactions Granted Early Termination—03/30/2006** | | | |
| 20050976 | Fresenius AG | Renal Care Group, Inc | Renal Care Group, Inc. |
| **Transactions Granted Early Termination—03/31/2006** | | | |
| 20060802 | Microsoft Corporation | Vexcel Corporation | Vexcel Corporation. |
| 20060825 | Citadel Broadcasting Corporation | ABC Chicago FM Radio, Inc | ABC Chicago FM Radio, Inc. |
| 20060826 | Sun Capital Partners IV, L.P | The Lubrizol Corporation | Lubrizol Foam Control Additives, Inc., Noveon Hilton Davis, Inc., Noveon, Inc., Noveon IP Holdings Corp., Noveon Kalama, Inc., Noveon Textile Chemicals, Inc. |
| 20060837 | General Electric Company | iVillage Inc | iVillage Inc. |
| 20060838 | AerCap Holdings C.V | Robert Nichols | AeroTurbine, Inc. |
| 20060839 | Aercap Holdings C.V | Nicolas Finazzo and Rose Ann Finazzo. | AeroTurbine, Inc. |
| 20060841 | Nautic Partners V, L.P | Frontenac VII Limited Partnership | 101communications LLC. |
| 20060843 | Cendant Corporation | BRE/LQJV L.L.C | Baymont Franchising LLC, Baymont Licensing Corporation, c/o LQ Management LLC, Lodge Holdco II LLC. |
| 20060851 | Hellman & Friedman Capital Partners V, L.P. | Hicks, Muse, Tate & Furst Equity Fund III, L.P. | Activant Solutions Holdings, Inc. |
| 20060857 | Seaport Capital Partners III AIV, L.P | Aquila, Inc | Everest Connections, LLC, Everest Holdings III, LLC, Everest Holdings I, LLC, Everest I Leasing & Financing LLC. |
| 20060858 | Diamond Castle Partners IV, L.P | Holdings, Inc | Holdings, Inc. |
| 20060861 | EM Acquisition Corporation | Education Management Corporation | Education Management Corporation. |
| **Transactions Granted Early Termination—04/04/2006** | | | |
| 20060670 | Societe Lorraine de Participations Siderurgiques SLPS, S.A. | LBO France Gestion SAS | Materis Holding Luxembourg S.A. |
| 20060789 | JPM Chase | Kohl's Corporation | Kohl's Corporation, Kohl's Department Stores, Inc. |
| 20060815 | Inversiones Argos S.A | Audax Private Equity fund, L.P | RMCC Group, Inc. |

| Trans. No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **Transactions Granted Early Termination—04/05/2006** | | | |
| 20060814 | Macquarie Infrastructure Company Trust. | k1 Ventures Limited | K–1 HGC Investment, L.L.C. |
| 20060820 | HSBC Holdings plc | American Securities Partners III, L.P | ASP Unifrax Inc. |
| 20060862 | R.R. Donnelley & Sons Company | Office Tiger Holdings, Inc | Office Tiger Holdings, Inc. |
| **Transactions Granted Early Termination—04/07/2006** | | | |
| 20060812 | M. Brooks Smith | PRE Holdings, Inc | ECM Holdings, LLC, ITC Financial Licenses, Inc., ITC Financial Services, LLC, PRE Solutions, de Puerto Rico, Inc., PRE Solutions, Inc., Telecom International Services, Inc. |
| 20060856 | American International Group, Inc | John M. and Patricia D. Noel, husband and wife. | Travel, Guard Group, Inc. |
| 20060872 | Vestar Capital Partners V, L.P | Madison Dearborn Capital Partners III, L.P | National Mentor Holdings, Inc. |
| 20060873 | Valcon Acquisition Holding (Luxembourg) S.a.r.l. | VNU N.V | VNU N.V. |
| 20060876 | TA X L.P | Old Mutual plc | eSecLending, Inc. |
| 20060893 | Iconix Brand Group, Inc | Tack Fat Group International Limited | Mudd (USA) LLC. |
| 20060897 | Nucor Corporation | Connecticut Steel Holding Corporation.. | Connecticut Steel Corporation, Connecticut Steel Leasing Corporation. |
| **Transactions Granted Early Termination—04/11/2006** | | | |
| 20060834 | Franklin Electric Co., Inc | Tecumseh Products Company | Little Giant Pump Company. |
| 20060878 | HSBC Holdings plc | Boscov's, Inc | Boscov's Department Store, LLC, Boscov's Receivables Finance Corp. |
| 20060881 | Endeavour Capital Fund IV, L.P | San Francisco Sausage Company, Inc. | San Francisco Sausage Company, Inc. |
| **Transactions Granted Early Termination—04/12/2006** | | | |
| 20060867 | Trian Star Trust | H.J. Heinz Company | H.J. Heinz Company. |
| 20060868 | Trian SPV I, L.P | H.J. Heinz Company | H.J. Heinz Company. |
| 20060869 | Castlerigg International Limited | H.J. Heinz Company | H.J. Heinz Company. |
| **Transactions Granted Early Termination—04/13/2006** | | | |
| 20060853 | Fisher Scientific International Inc | Behrman Capital III, L.P | ADI Holding Company, Inc. |
| **Transactions Granted Early Termination—04/14/2006** | | | |
| 20060877 | Warner Music Group Corp | JPMorgan Chase & Co | Ryko Corporation. |
| 20060885 | TowerBrook Investors II, L.P | Nancy W. Laurie and William J. Laurie. | Kiel Center Partners, L.P. Kiel Center Redevelopment Corporation, St. Louis Blues Hockey Club Enterprises Company, St. Louis Blues Hockey Club, L.P. |
| 20060905 | Hiland Partners, L.P | OGE Energy Corp | Enogex Gas Gathering, LLC. |
| 20060908 | Francisco Partners, L.P. | Viasystems Group, Inc | Wire Harness Industries, Inc. |
| 20060909 | Services Acquisition Corp. International. | Jamba Juice Company | Jamba Juice Company. |
| 20060912 | Pitney Bowes, Inc | Jay McNally | Ibis Consulting, Inc. |
| 20060917 | Investec plc | Midwest Grain Processors Cooperative. | Midwest Grain Processors, LLC. |

| Trans. No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20060924 | Pilot Group L.P | Raycom Media, Inc | Cosmos Broadcasting Corporation, KTVO License Subsidiary LLC, KTVO LLC, KXRM/KXTU License Subsidiary, LLC, KXRM/KXTU, LLC, LibCo, Inc., Raycom Holdings LLC, Raycom TV Broadcasting, Inc., WACH License Subsidiary LLC, WACH LLC, WFXL License Subsidiary, LLC, WFXL, LLC, WLUC License Subsidiary, LLC, WLUC, LLC, WNWO License Subsidiary, LLC, WNWO, LLC, WPBN/WTOM, LLC, WSTM License Subsidiary, LLC, WSTM, LLC. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contract Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 06–3932 Filed 4–25–06; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 061 0046]**

### Boston Scientific Corporation and Guidant Corporation; Analysis of Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 18, 2006.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to ''Boston Scientific and Guidant, File No. 061 0046,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**FOR FURTHER INFORMATION CONTACT:** Michael R. Moiseyev, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3106.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 20, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/04/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

### Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Boston Scientific Corporation (''Boston Scientific''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Boston Scientific's acquisition of Guidant Corporation (''Guidant''). Under the terms of the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

proposed Consent Agreement, Boston Scientific and Guidant are required: (a) To divest all assets (including intellectual property) related to Guidant's vascular business to a third party, enabling that third party to make and sell drug eluting stents (''DESs'') with the Rapid Exchange (''RX'') delivery system; Percutaneous Transluminal Coronary Angioplasty (''PTCA'') balloon catheters; and coronary guidewires, and (b) to reform Boston Scientific's contractual rights with Cameron Health, Inc. (''Cameron'') to limit Boston Scientific's control over certain Cameron actions and the sharing of non-public information about Cameron's Implantable Cardioverter Defibrillator (''ICD'') product.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated January 25, 2006, Boston Scientific proposes to acquire Guidant in exchange for cash and voting securities in a transaction valued at approximately $27 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by removing an imminent competitor from the U.S. market for DESs and by lessening competition in the U.S. markets for PTCA balloon catheters and coronary guidewires. The proposed Consent Agreement would remedy the alleged violations by requiring a divestiture that will replace the competition that otherwise would be lost in these markets as a result of the acquisition.

Boston Scientific is a worldwide developer, manufacturer, and marketer of medical devices used in a broad range of interventional medical specialties such as interventional cardiology, peripheral intervention, and vascular surgery. In 2005, Boston Scientific reported worldwide sales of approximately $6.3 billion, with U.S. sales of $3.8 billion.

Guidant manufactures products in three broad business units: cardiac rhythm management (''CRM''), vascular intervention, and cardiac surgery. In 2005, Guidant's sales were $3.6 billion globally, with U.S. sales of $2.3 billion. Guidant's DES program, PTCA balloon catheters, and coronary guidewires are part of the vascular intervention business unit, while its ICD products are a part of the CRM business unit.

**Drug-Eluting Stents**

A DES is a medical device typically consisting of a thin, metallic stent coated with an antiproliferative drug and a polymer, mounted on a delivery system. Interventional cardiologists use DESs to treat coronary artery disease, a condition caused by the build-up of plaque deposits within one or more coronary arteries, leading to reduced blood flow. DESs work by propping open the clogged artery or arteries and eluting a drug, which helps prevent the renarrowing of the artery, called restenosis. DESs are the most effective minimally-invasive method for treating coronary artery disease, and other products and procedures are not economic substitutes for DESs.

DESs are sold mounted on a delivery system used to deploy the DES to the blocked area of the coronary artery. The two most common types of delivery systems in the United States are over-the-wire and Rapid Exchange (''RX''). Over-the-wire delivery systems employ a long guidewire and require two operators to implant the DES. In contrast, RX delivery systems employ a shorter guidewire that can be handled by a single operator. RX delivery systems currently are strongly preferred by physicians in the United States and continue to increase in popularity. Boston Scientific and Guidant own the intellectual property rights to the RX delivery system in the United States. The companies have cross-licensed each other, and Johnson & Johnson (''J&J'') has access to the RX delivery system through an agreement with Guidant. Both DESs currently on the market, Boston Scientific's Taxus® and J&J's Cypher®, are available on an RX delivery system.

The relevant geographic market in which to analyze the effects of the proposed acquisition on the DES market is the United States. DESs are medical devices that are regulated by the United States Food and Drug Administration (''FDA''). Performing the necessary clinical testing and navigating the approval process for the FDA can be burdensome and time-consuming. As such, DESs sold outside the United States but not approved for sale in the United States do not provide viable competitive alternatives for U.S. consumers.

The U.S. market for DESs is highly concentrated; currently only two firms, J&J and Boston Scientific, have products on the market. Guidant's DES program is still in development, but it is anticipated to be one of at least three entrants, along with Medtronic, Inc. (''Medtronic'') and Abbott Laboratories (''Abbott''), likely to enter the U.S. market by the end of 2007 or early 2008. Guidant is the only anticipated entrant with rights to the intellectual property necessary to market a DES with an RX delivery system—the dominant delivery system in the United States.

Developing and receiving FDA approval for a DES is difficult, time-consuming and expensive. It can take hundreds of millions of dollars of research and development, significant funding for clinical trials, and an extensive amount of time to reach even the stage of seeking FDA approval. The regulatory process itself can also be time-consuming because the FDA reviews the volumes of materials and data a company submits in support of its application for approval. Considering all these factors, entry into the manufacture and sale of DESs is impossible to achieve within two years.

In addition to the regulatory barriers facing firms seeking to enter the DES market, there are substantial intellectual property barriers an entrant must overcome. Firms must invent around or obtain licenses to patents covering nearly every aspect of a DES, including the design of stents, stent delivery systems, and the drugs and polymers used on DESs. Due to the difficulty of entry, firms must commit to entering the market years in advance of any anticipated entry, and timely and sufficient entry in response to a small but significant price increase is impossible.

The proposed acquisition would cause significant competitive harm in the market for DESs by eliminating Guidant as the only potential competitor to Boston Scientific and J&J with the ability to offer a DES on an RX delivery system. Guidant is the only potential entrant with access to the RX patents and freedom to commercialize its DES product in the United States. Evidence shows a third fully competitive firm—one with access to an RX delivery system—is likely to enhance competition in the DES market. Unless remedial action is taken, the acquisition of Guidant by Boston Scientific would deprive customers of the benefits of a third fully competitive entrant in the U.S. DES market.

As a third RX competitor in the DES market, Guidant likely would increase competition and reduce prices for DESs. Market participants expect that the launch of Guidant's DES product would

increase substantially competition in the market. Customers and analysts predict that Guidant's product would take substantial market share from both J&J's and Boston Scientific's products upon its launch. Customers—both interventional cardiologists and hospital purchasing agents—and competitors also agree that a third fully competitive entrant would significantly reduce the price of DES products and be likely to give them the full benefit of competition in the DES market. This view is reinforced by evidence showing that competition between Boston Scientific and J&J already has reduced prices for DESs.

Although two other firms, Abbott and Medtronic, are poised to enter the market in the same approximate time frame as Guidant, their lack of access to the RX delivery system makes it unlikely that either company could be a substantial competitive constraint on prices in the DES market in the near term. The proposed acquisition therefore decreases the number of potential DES suppliers with access to the RX delivery system from three to two until at least late 2008, when Guidant's key patents relating to the RX delivery system begin to expire.

**PTCA Balloon Catheters and Coronary Guidewires**

PTCA balloon catheters and coronary guidewires are also devices used in interventional cardiology procedures, including DES placement. A PTCA balloon catheter is a long, thin flexible tube (the catheter) with a small inflatable balloon at its tip. During an angioplasty procedure, it is inserted into a blocked coronary artery and inflated to widen the artery and improve blood flow. The PTCA balloon catheter is delivered to the lesion site over a coronary guidewire, an extremely thin wire with a flexible tip.

As with DESs, the relevant geographic market in which to analyze the effects of the proposed acquisition on the PTCA balloon catheter and coronary guidewire markets is the United States. Both are medical devices regulated by the FDA. PTCA balloon catheters and coronary guidewires sold outside the United States but not approved for sale in the United States do not provide viable competitive alternatives for U.S. consumers.

Boston Scientific and Guidant are the only suppliers in the PTCA balloon catheter and coronary guidewire markets with substantial sales in the United States. In the PTCA balloon catheter market, Boston Scientific is the market leader with a market share of approximately 69 percent. Guidant has a 21 percent market share, and J&J and Medtronic combined account for the remaining 10 percent of the market. Guidant is the market leader in the coronary guidewire market with a 46 percent share of the market, while Boston Scientific has a market share of 39 percent. J&J, Medtronic, and Abbott account for the remaining 15 percent of the market.

Entry into the U.S. markets for PTCA balloon catheters and coronary guidewires is difficult, time-consuming, and expensive. FDA approval, which can take several years to obtain, is required to market both products in the United States. In addition, intellectual property barriers relating to the design of these products exist, and a new entrant would need to successfully navigate through these barriers to enter the PTCA balloon catheter or coronary guidewire market. New entry in these small markets is also unlikely because of the large sales and marketing force necessary to detail these products to physicians compared to the limited size of the likely sales opportunity.

The proposed acquisition is likely to cause competitive harm in the markets for PTCA balloon catheters and coronary guidewires by eliminating competition between Boston Scientific and Guidant and reducing the number of significant competitors in the market. The evidence has also shown that Boston Scientific's and Guidant's products are likely each others' closest competitors in the PTCA balloon catheter and coronary guidewire markets. For example, numerous industry participants consider Boston Scientific and Guidant to be the closest competitors in these markets, a view confirmed by the parties' own documents. Moreover, customers uniformly consider Boston Scientific and Guidant to be their first and second choices for PTCA balloon catheters and coronary guidewires. The proposed acquisition therefore likely would enable the combined Boston Scientific/Guidant to raise prices for PTCA balloon catheters and coronary guidewires unilaterally.

**The Consent Agreement**

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the markets for DESs, PTCA balloon catheters, and coronary guidewires. Pursuant to the proposed Consent Agreement, the combined Boston Scientific/Guidant is required to divest Guidant's entire vascular business, at no minimum price, to an up-front buyer before Boston Scientific's acquisition of Guidant.

Guidant's vascular business includes, among other things, its DES development program (including the RX delivery system patents) and its PTCA balloon catheter and coronary guidewire products. The parties have selected Abbott as the up-front buyer for the divestiture package. Abbott is a well-known and respected pharmaceutical and diagnostics company that has a number of vascular devices on the market already or in development. It has experience with both drugs and vascular devices, a highly regarded DES design, a strong and growing vascular sales force, and the necessary manufacturing capabilities. As such, Abbott is well-positioned to replicate Guidant's competitiveness in the DES market with the acquisition of the RX intellectual property, and in the PTCA balloon catheter and coronary guidewire markets with the addition of Guidant's product lines in those areas.

Boston Scientific's agreement with Abbott provides Boston Scientific with a license to the Guidant DES program, and Abbott and Boston Scientific will therefore share the Guidant DES program. In addition, Abbott has its own DES product in development upon which it will be able to use the RX delivery system patents. Abbott is poised to become a strong competitor in the DES market when it enters in the second half of 2007 or early 2008, approximately the same time as Guidant's anticipated date of entry. Access to the RX delivery system will allow Abbott to replace Guidant as the third independent competitor in the DES market with an RX delivery system. Because Abbott's DES (after acquiring the RX intellectual property in the divestiture) will resolve the competitive concerns associated with the elimination of the third RX DES, the proposed sharing of the Guidant program between Abbott and Boston Scientific is competitively neutral.

The Consent Agreement contains a number of provisions to help ensure that the divestiture to Abbott is successful. First, in purchasing all of Guidant's vascular business, Abbott will obtain four existing manufacturing facilities and one currently under construction. Although certain Guidant vascular products are manufactured in facilities that are not being transferred, the space dedicated to the Guidant vascular products in those facilities is physically separate, and the manufacturing of those products will be transferred to Abbott-owned facilities in a timely fashion. To minimize the possibility of supply disruptions and to prevent information exchanges between Abbott and Boston Scientific during the

transition period, the Consent Agreement requires Abbott and Boston Scientific to enter into interim transitional service and confidentiality agreements.

Finally, Abbott has taken a small equity position (under 5 percent) in Boston Scientific as part of the financing of Boston Scientific's acquisition of Guidant. To limit any long-term entanglements between the parties, the proposed Consent Agreement requires Abbott to relinquish its voting rights (by voting its shares in the same proportion as all other shareholders in shareholder votes) and to divest its equity stake in Boston Scientific within thirty months of closing.

**Implantable Cardioverter Defibrillators**

ICDs are small electronic devices installed inside the chest to prevent sudden death from cardiac arrest due to abnormal heart rhythms. They are designed to counteract fibrillation of the heart muscle and restore normal heart rhythms by applying a brief electric shock. Three firms—Medtronic, Guidant, and St. Jude Medical—account for more than 98 percent of the $1.8 billion in annual sales in the U.S. ICD market, and have been the only competitively significant providers of ICDs in the United States for over ten years. Although Boston Scientific does not currently sell and is not developing any ICD products, it owns a ten to fifteen percent equity stake in a CRM start-up known as Cameron Healthcare Inc. More importantly, it has an option to acquire Cameron that provides certain information sharing and control rights prior to the exercise of the option. Cameron is developing a novel, ''leadless'' subcutaneous ICD that is on track to receive FDA approval in approximately two to three years.

As in the DES, PTCA balloon catheter, and coronary guidewire markets, additional entry into the U.S. market for ICDs is difficult, time-consuming, and expensive. FDA approval is required to market ICDs in the United States and a new entrant would need to navigate around the substantial intellectual property barriers that exist in order to make a significant market impact.

Boston Scientific's option to acquire Cameron provides Boston Scientific with access to non-public information about Cameron and control over certain actions of Cameron that were originally intended to protect Boston Scientific's investment. After Boston Scientific is combined with Guidant, those previously unobjectionable provisions may adversely affect competition in the ICD market because they allow the combined Boston Scientific/Guidant to receive information from and exercise control over Cameron—a potentially significant future competitor.

To alleviate these competitive concerns, the proposed Consent Agreement imposes limits on Boston Scientific's access to Cameron information and on Boston Scientific's ability to exercise any control over Cameron. First, a firewall will be established that will limit the circumstances under which Boston Scientific will receive Cameron information, as well as the individuals at Boston Scientific who may receive such information. Second, with respect to the control provisions, Boston Scientific will relinquish its right to exercise those provisions unilaterally. Pursuant to the proposed consent order, a proxy will be appointed who will independently determine whether Boston Scientific may exercise its contractual control rights. The purpose of the proxy is to ensure that Boston Scientific makes decisions with respect to the control provisions in the same manner as it would have absent the Guidant transaction. In making that determination, the proxy will act as an ordinary, prudent corporation of the scope of Boston Scientific (prior to the acquisition of the Guidant CRM business).

Finally, with respect to the ten to fifteen percent equity stake held by Boston Scientific in Cameron, Boston Scientific has agreed to provisions similar to those governing Abbott's equity investment in Boston Scientific, namely that it will vote its shares in the same proportion as all other shareholders in any shareholder vote. Furthermore, Boston Scientific will divest its equity investment in Cameron within eighteen months if it does not acquire control of Cameron prior to the expiration of its option or if it is enjoined from acquiring Cameron.

To ensure that the Commission will have an opportunity to review any attempt by Boston Scientific to exercise its option to acquire Cameron, the proposed Consent Order contains a prior notice provision committing Boston Scientific to an H–S–R framework even if the transaction otherwise would be non-reportable.

**Appointment of an Interim Monitor and a Divestiture Trustee**

The proposed Consent Agreement contains a provision that allows the Commission to appoint an interim monitor to oversee Boston Scientific's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order. The interim monitor is required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures, about the efforts being made to accomplish the divestitures, and the provision of services and assistance during the transition period for the divestiture.

Finally, the proposed Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee if any or all of the above remedies are not accomplished within the time frames established by the Consent Agreement. The divestiture trustee may be appointed to accomplish any and all of the remedies required by the proposed Consent Agreement that have not yet been fulfilled upon expiration of the time period allotted for each one.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission, with Commissioner Harbour recused.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E6–6226 Filed 4–25–06; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator; American Health Information Community Chronic Care Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the fifth meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

**DATES:** May 3, 2006 from 1 p.m. to 5 p.m.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/cc_main.html.*

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 13, 2006.

**Kelly Cronin,**

*Director, Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 06–3918 Filed 4–25–06; 8:45 am]

**BILLING CODE 4150–24–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator, American Health Information Community Electronic Health Records Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the fifth meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

**DATES:** May 2, 2006 from 1 p.m. to 5 p.m.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/ehr_main.html.*

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 13, 2006.

**Kelly Cronin,**

*Director, Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 06–3919 Filed 4–25–06; 8:45 am]

**BILLING CODE 4150–24–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator; American Health Information Community Biosurveillance Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the fifth of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

**DATES:** May 4, 2006 from 1 p.m. to 5 p.m.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/bio_main.html.*

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 13, 2006.

**Kelly Cronin,**

*Director, Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 06–3920 Filed 4–25–06; 8:45 am]

**BILLING CODE 4150–24–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator; American Health Information Community Consumer Empowerment Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the fifth meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

**DATES:** May 1, 2006 from 1 p.m. to 5 p.m.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/ce_main.html*.

**SUPPLEMENTARY INFORMATION:** The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67*.

Dated: April 13, 2006.

**Kelly Cronin,**

*Director, Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 06–3921 Filed 4–25–06; 8:45 am]

**BILLING CODE 4150–24–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Immunization Practices

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following teleconference.

*Name:* Advisory Committee on Immunization Practices (ACIP).

*Time and Date:* 2 p.m.–4 p.m., May 4, 2006.

*Place:* National Immunization Program (NIP), Atlanta, Georgia. To participate, please call 1–888–769–8923, pass code 3537839.

*Status:* Open to the public, limited only by the availability of telephone ports.

*Purpose:* The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

*Matters To Be Discussed:* Varicella vaccination policy options.

This notice is being published less than 15 days as provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the teleconference be held prior to the first available date for publication of this notice in the **Federal Register**.

*Contact Person for More Information:* Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, Mail Stop E–61, Atlanta, Georgia 30333, telephone 404–639–8096, fax 404–639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 20, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 06–3987 Filed 4–25–06; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Privacy Act of 1974; Report of a New System of Records

**AGENCY:** Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Notice of a New System of Records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Medicare Health Support System (MHS), System No. 09–70–0574.'' The program is mandated by

Section 721 of the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), which was enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act (the Act). The MHS program seeks to improve beneficiary self-care and provide beneficiaries and their providers enhanced information and support in order to increase adherence to evidence-based care. Improvements in these areas are expected to generate savings to the Medicare program to offset the costs of the payments. The statute is designed to support dynamic evolution of the program over time, based on program experience and outcomes. Section 1807(c)(1) of the Act requires the Secretary of HHS to enter into agreements to expand the implementation of successful programs or components to additional geographic areas, which may include the implementation of the program on a national basis. Prior to widespread implementation of the program, an initial 3-year Phase I must provide proof of concept through an experimental design involving random assignment of beneficiaries to either an intervention or control group.

The purpose of this system is to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the MHS program. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a Congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain Federally-funded health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

**EFFECTIVE DATES:** CMS filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on *April 18, 2006.* To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

**ADDRESSES:** The public should address comment to the CMS Privacy Officer, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

**FOR FURTHER INFORMATION CONTACT:** Melissa Dehn, Division of Chronic Care Improvement Programs, Provider Billing Group, Center for Medicare Management, Mail Stop C4–10–07, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. She can be reached by telephone at 410–786–5721, or via e-mail at *Melissa.Dehn@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The MHS program pays monthly fees to Chronic Care Improvement Organizations (CCIO) for improving the quality and effectiveness of health care services delivered to Medicare Fee-For-Service (FFS) beneficiaries. Mandated by § 721 of the MMA, the MHS program seeks to: (1) Improve beneficiary self-care, (2) provide beneficiaries and their providers enhanced information and support to increase adherence to evidence-based care, and (3) improve clinical quality and both beneficiary and provider satisfaction. This program is designed to achieve Medicare spending targets for populations with one or more chronic health conditions. The MHS program enables CMS to test the program business design, and program components and to test the effect on utilization, cost, and quality of care to Medicare FFS beneficiaries.

Medicare claims for participating beneficiaries will continue to be paid of an FFS basis. Separate payments to participating CCIOs will be made on a per-person per-month basis, to be derived from savings expected through improvements in care coordination for an assigned beneficiary population. CMS will evaluate and monitor these individual MHS programs using more than 60 individual measures, in four distinct areas of performance: (1) Clinical performance, (2) healthcare utilization, (3) program activity, and (4) participant satisfaction. Additionally, the pilot phase of the program will be evaluated on its effectiveness in achieving program goals, and its potential for expansion to additional geographic areas.

## I. Description of the Proposed System of Records

### *A. Statutory and Regulatory Basis for SOR*

The statutory authority for this system is given under the provisions of Section 721 of the Medicare Prescription Drug Improvement, and Modernization Act of 2003 and Section 1807(a)(1) of the Social Security Act.

### *B. Collection and Maintenance of Data in the System*

This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries who are potential participants in the MHS program and providers who provide services to such beneficiaries. Data will be collected from Medicare administrative and claims records, CCIO administrative data systems, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers. The collected information will include, but is not limited to: Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues. It will also include chronic care diagnosis, treatment, program participation, and evaluation, survey, and research information

needed to evaluate the program and develop research reports on findings.

**II. Agency Policies, Procedures, and Restrictions on the Routine Use**

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release MHS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of MHS.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the MHS program. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

**III. Proposed Routine Use Disclosures of Data in the System**

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies, in their administration of a Federal health program, may require MHS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MHS data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policies that govern their care.

4. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes to CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct,

remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MHS information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

## IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

## V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

**John R. Dyer,**

*Chief Operating Officer, Centers for Medicare & Medicaid Services.*

## System No. 09–70–0574

### SYSTEM NAME:

''Medicare Health Support System (MHS),'' HHS/CMS/CMM.

### SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

### SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS agents.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries who are potential participants in the MHS program and their providers who provide services to such beneficiaries. Data will be collected from Medicare administrative and claims records, CCIO administrative data systems, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to: Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues. It will also include chronic care diagnosis, treatment, program participation, and evaluation, survey, and research information needed to evaluate the program and develop research reports on findings.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under the provisions of Section 721 of the Medicare Prescription Drug Improvement, and Modernization Act of

2003 and Section 1807(a)(1) of the Social Security Act.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this system is to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the MHS program. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a Congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain Federally-funded health benefits programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are stored on electronic media.

**RETRIEVABILITY:**

The collected data are retrieved by an individual identifier; *e.g.*, beneficiary name or HICN.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-

Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

CMS will retain information for a total period not to exceed 25 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Chronic Care Improvement Programs, Provider Billing Group, Center for Medicare Management, CMS, Mail Stop C4–10–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**NOTIFICATION PROCEDURE:**

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORDS SOURCE CATEGORIES:**

The data contained in this system of records will be collected from Medicare administrative and claims records, CCIO administrative data systems, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E6–6210 Filed 4–25–06; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Projects

*Title:* Developmental Disabilities Protection and Advocacy Statement of Goals and Priorities.

*OMB No.:* 0980–0270.

*Description:* As required by Federal statute and regulation, each State Protection and Advocacy (P&A) System must prepare and submit to public comment a Statement of Goals and Priorities (SGP) for the P&A for Developmental Disabilities (PADD) program for each coming fiscal year. The P&A is mandated to protect and advocate under a range of different Federally authorized disabilities programs, but only the PADD program requires an SGP. The final version of this SGP, following the required public input for the coming fiscal year, is submitted to the Administration on Developmental Disabilities (ADD). The information in the SGP will be aggregated into a national profile of programmatic emphasis for P&A Systems in the coming year. It will provide ADD with a tool for monitoring of the public input requirement. Furthermore, it will provide an overview of program direction, and permit ADD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act of 1993.

*Respondents:* State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| P&A SGP | 57 | 1 | 44 | 2,508 |

*Estimated Total Annual Burden Hours:* 2,508.

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: *infocollection@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: April 19, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–3911 Filed 4–25–06; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Response to Solicitation of Comments on Proposed Changes to Criteria and Process for Assessing Community Need Under the President's Health Centers Initiative

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Response to solicitation of comments.

**SUMMARY:** A notice was published in the **Federal Register** (FRN) on February 4, 2005 (Vol. 70, No. 23, pp. 6016–6023), detailing proposed changes to the Need for Assistance (NFA) Worksheet criteria being considered for use in future Consolidated Health Center New Access Point (NAP) grant cycles. The FRN requested public comments on these proposed changes and on the degree to which Need should be weighted relative to the other criteria used in the NAP application scoring process. Comments were to be provided to HRSA by March 7, 2005.

The proposed changes to the NFA Worksheet criteria and the solicitation of comments were motivated by HRSA's continuous efforts to improve its grant processes. To that end, HRSA sought comment on how to improve its measure of need for comprehensive primary and preventive health care services in the service area or population to be served by a NAP applicant, and whether the weighting of need relative to other application review criteria should be increased.

Comments were received from over 50 organizations and/or individuals regarding the proposed changes. These comments were thoroughly evaluated. This FRN presents a summary of the comments received by topic, with HRSA's corresponding responses, and a summary of the final changes HRSA has decided to make to the NFA Worksheet and the weighting of Need in the application review process.

*Authorizing Legislation:* Section 330(e)(1)(A) of the Public Health Service (PHS) Act, as amended, authorizes support for the operation of public and nonprofit private health centers that provide health services to medically underserved populations. Similarly, section 330(g) authorizes grants for delivery of services to Migratory and Seasonal Agricultural Workers; section 330(h) to Homeless populations; and section 330(i) to residents of Public Housing.

*Reference:* For the previous NFA Worksheet criteria and previously used application weights, see Program Information Notice (PIN) 2005–01, entitled (Requirements of Fiscal Year 2005 Funding Opportunity for Health Center New Access Point Grant Applications.''

*Background:* The goal of the President's Health Centers Initiative, which began in fiscal year (FY) 2002, is to increase access to comprehensive primary and preventive health care services through development of new and/or significantly expanded health center access points in 1,200 of the Nation's neediest communities. Funded health centers are expected to provide comprehensive primary and preventive health care services in areas of high need that will improve the health status of the medically underserved populations to be served and decrease health disparities. Services at these new access points may be targeted toward an entire community or service area or toward a specific population group in the service area that has been identified as having unique and significant barriers to affordable and accessible health care services.

It is important that NAP grant awards be made to entities that will successfully implement a viable and legislatively compliant program for the delivery of comprehensive primary health services. It is also essential that all NAP applicants demonstrate the need for such services in the community/population to be served and be evaluated on that need.

As part of its efforts to improve the needs assessment process, HRSA arranged for an external evaluation of the NFA Worksheet criteria and the use of need factors in the overall application review process. The evaluation was conducted by a team consisting of HSR, Inc. and the University of North Carolina's Cecil G. Sheps Center for Health Services Research. Key results of the evaluation analyses were presented in the FRN, as well as recommendations for proposed changes. Comments were solicited for the proposed changes.

A summary of the comments received from the public and HRSA's response to these comments are presented below.

**Summary of General Comments on Need and NFA Revision Topics**

*Timing of Implementation*

*Issue:* The FRN indicated that the second round of funding of FY 2005 NAP applications was being delayed, pending receipt and consideration of public comments on the proposed changes to the NFA Worksheet criteria.

*Comments:* Comments on timing of implementation reflected the fact that two application cycles had been announced for FY 2005. Applications had been submitted for consideration under the first deadline of December 1, 2004, and a second round application deadline of May 23, 2005, was anticipated. At the time of the FRN, no applications had been submitted for the second cycle. Comments indicated a concern that changing the process of determining NAP awards in the middle of the FY 2005 cycle could potentially result in significant costs to applicants to revise and resubmit their NAP application per the new NFA Worksheet criteria and could be unfair to applicants in the second cycle since NAP applications funded from the first round in FY 2005 would be reviewed using different NFA Worksheet and weighting of Need. HRSA was urged not to make such a change in the middle of a funding opportunity.

*Response:* HRSA will implement the revised NFA Worksheet in future NAP funding opportunities, in a manner which will assure consistency within each funding announcement.

*Relative Importance of Need as an Application Review Factor*

*Issue:* The FRN stated that the evaluation team had recommended increasing the weight of Need in the application review process from the present 10 percent for a narrative ''description of service area/community and target population'' to 20 percent applied to the NFA Worksheet score. The FRN requested public comments on what percentage of the total application score should be devoted to Need, and whether that should be derived from an objective revised NFA Worksheet score or in some other manner.

*Comments:* Comments indicated general concurrence that additional points should be allocated to the assessment of Need and supported allocation of at least 20 percent of the total application score to Need. Additionally, comments indicated that the existing narrative description of the service area/population Need should be retained, especially since it formed the basis for other sections of the application which describe how the

health care needs of the area's population will be addressed through the proposed project.

*Response:* HRSA will increase the weight of Need within the NAP application to a level of slightly more than ⅓ (35 percent) of the total application score. The following strategy has been adopted to combine the use of objective measures of Need with a continued role for narrative description of Need:

- The quantitative need score derived from the revised NFA Worksheet (discussed in detail below) will account for up to 25 points out of 100 total points in the overall score for the application. The NFA Worksheet will be scored out of 100 points using the scoring criteria included in the application guidance. The NFA Worksheet score will then be converted to account for up to 25 points (25 percent) of the total overall application score.
- 10 points (10 percent of the total overall application score) will continue to be dedicated to a narrative description of Need in the application.

*Where Should Additional Points for Need Come From?*

*Issue:* In the FRN, the evaluation team suggested reducing the points allotted for Governance from 10 percent to 5 percent, and reducing the points allocated to ''Service Delivery Strategy and Model'' from 20 percent to 15 percent, to accommodate increasing Need from 10 percent to 20 percent.

*Comments:* Comments expressed specific concern regarding drawing points away from the Governance criterion. Comments suggested that points instead should be taken from Impact, Evaluative Measures, or Response, or alternatively, that all other criteria should be proportionally reduced to accommodate the increase in Need.

*Response:* To accommodate the inclusion of the NFA Worksheet score within the total application score and to assure that the weighting of the Governance criterion is not changed, HRSA will reassign points among the remaining narrative criteria.

*Use of NFA as Eligibility Factor for ORC Review*

*Issue:* To date, the NFA Worksheet has been used as a screening tool, with only those applicants that achieved a total NFA Worksheet score of 70 or higher out of the possible 100 points having the merits of their application evaluated by the Objective Review Committee (ORC). The FRN proposed using a threshold of a score of 50 for future applications, but also requested comment on the concept of varying the threshold from year to year to maintain a certain ratio of applications reviewed to number of awards available.

*Comments:* Comments advised against changing the threshold from year to year and expressed concern that a threshold of 50 might be too low to target the neediest communities.

*Response:* HRSA has incorporated the NFA Worksheet score directly into the total application scoring process for NAP applications. Therefore, HRSA will no longer utilize the NFA Worksheet score as a screening mechanism thus eliminating the need for a score threshold.

*Data Issues for Special Populations (e.g., Homeless, Migrant and Seasonal Farmworkers)*

*Issue:* Operating grants for primary health care services under section 330 may be made for delivery of services to the general population of a medically underserved service area (under section 330(e)), and/or to the migrant and seasonal farmworker population of an agricultural area (under section 330(g)), and/or to a homeless population (under section 330(h)), and/or to residents of public housing (under section 330(i)). The same NFA Worksheet is used for all NAP applications targeting one or more of these areas and/or groups. Most data for the general population of an area is available at least at the county or county-equivalent level, and sometimes for subcounty areas (such as census tracts, county divisions, or zip codes), although some indicators are only available at the State or hospital district level. Data availability for special populations such as migrants and the homeless is much less generally available.

*Comments:* Some comments suggested that because of data availability issues, both the existing NFA Worksheet criteria and those being proposed in the FRN make it difficult for migrant or homeless populations to demonstrate levels of need comparable to or exceeding those of serving general populations in a geographic service area. The comments suggested that no change be made until better methods could be devised for adequately measuring the needs of these special populations, that the proposed criteria not be used for these populations, or that more flexibility be allowed for applicants proposing to serve such populations when citing data sources. Other comments suggested the use of data for migrant populations in neighboring States if the applicant's State does not have such data, or alternatively, the use of regional or even national data on migrant or homeless populations generally, where data for the local special population group are unavailable.

*Response:* HRSA recognizes that obtaining needs-related data on migrant and homeless populations is typically more difficult than obtaining similar data for the general population of a service area. Therefore, HRSA has incorporated greater flexibility for applicants who propose to serve such populations when preparing NFA Worksheets. The use of national, regional, or neighboring State data will be allowed in estimating the needs of such populations, where justified by the absence of State or local data.

*Use of Data Based on Service Area vs. Target Population*

*Issue:* The FRN contained tables showing the proposed indicators, scales, and benchmarks to be used with new NFA Worksheet criteria; these included instructions to ''give the most current value for an area or population group which most closely approximates the proposed service area and/or target population.''

*Comments:* Some comments indicated concern that applicants would inappropriately use ''target population'' as a means of ''gaming'' the scoring system. For example, by defining the target population as the population with incomes below 200 percent of poverty, an applicant could potentially get the full 15 points for that variable, even though the service area also included populations with incomes above the 200 percent of the poverty level. These comments also suggested that responses for the NFA Worksheet indicators should be reflective of the total service area population not a particular subpopulation. In contrast, other comments also raised the issue that, for projects serving certain populations, service area data is an incomplete and inadequate representation of the characteristics of the particular population being targeted in the application.

*Response:* In response to concerns that HRSA needs to better define the target population in order to reduce ''gaming,'' HRSA has clarified the instructions in the NFA Worksheet. Responses to the NFA Worksheet will need to be based on data about the service area proposed in the NAP application, except if the applicant is proposing to serve a special population, as defined in statute. Organizations proposing to serve migrant, homeless and/or public housing population (as per section 330(g), (h), and (i)

respectively), may adjust the data presented based on special target populations in that area, per the following approach:

• Applicants requesting funding to serve the general population of a service area (under section 330(e)) must provide responses on the NFA Worksheet that reflect the total population within the defined service area for the application. When sub-county level data are not available, applicants may use extrapolation or imputation techniques to appropriately weight the available county or higher-level data to reflect the demographics of their service area population. (These techniques will be described in the Data Resource Guide available on the HRSA Web site online at: *http://www.bphc.hrsa.gov/chc.*)

• Applicants requesting funding to serve ONLY homeless populations (under section 330 (h)), migrant/seasonal farmworkers (under section 330(g)) and/or residents of public housing (under section 330(i)) must provide responses on the NFA Worksheet which reflect that specific population(s) within the service area. When specific population data are not available, applicants may use extrapolation or imputation techniques to appropriately weight the available county or higher-level data to reflect the demographics of their target population. (These techniques will be described in the Data Resource Guide available on the HRSA Web site online at: *http://www.bphc.hrsa.gov/chc.*)

• Applicants requesting funding to serve the homeless (under section 330 (h)), and/or migrant/seasonal farmworkers (under section 330(g)) and/or residents of public housing (under section 330(i)), in combination with the general population (under section 330(e)), must present responses on the NFA Worksheet that reflect, as closely as possible, all of the populations to be served. In calculating the response, applicants may use extrapolation techniques to appropriately weight each measure to reflect the homeless, migrant/seasonal farmworkers, or public housing population within the service area. For the portion of the response that reflects the general population, data should be based on the population within the defined service area. When sub-county level data are not available, applicants may use extrapolation or imputation techniques to appropriately weight the available county or higher-level data to reflect the demographics of their service area population. (These techniques will be described in the Data Resource Guide available on the HRSA Web site online at: *http://www.bphc.hrsa.gov/chc.*)

*Availability of Data Sources for Barrier and Disparity Indicators*

*Issue:* Availability of data has been a concern and challenge in completing the NFA Worksheet. Applicants have noted the difficulty of obtaining data for particular indicators and especially in finding reliable and valid data at the local, service area level.

*Comments:* Comments addressed a number of issues on this topic. In order to facilitate completion of the NFA Worksheet, comments suggested that HRSA identify and make available appropriate and acceptable data sources, especially if the number of indicators is being reduced. Comments also suggested that, to the degree possible, data sources should be standardized while still allowing flexibility when local data are presented by the applicant, since the availability of data may vary widely across States and may not be stable for rural and frontier areas. Comments cautioned that if the number of indicators allowed to be used in completing the NFA Worksheet is reduced as was suggested in the FRN, HRSA should assure that data is available for all of the required indicators. Additionally, comments suggested that in cases where the use of multi-year data will be required for indicators, the number of years should be standardized for consistency and, where State or county data is all that is available, HRSA should allow extrapolation techniques to estimate values for service areas or target populations.

*Response:* HRSA has developed a detailed Data Resource Guide (accessible on the HRSA Web site online at: *http://www.bphc.hrsa.gov/chc*) to assist applicants in completing the revised NFA Worksheet. The Data Resource Guide identifies data sources for each Barrier and Disparity Indicator required or listed as optional on the NFA Worksheet. These sources provide data at a county level or a subcounty level, or where such local data is not available, State or regional data that can be broken down by the categories such as race, ethnicity, gender, and/or age for extrapolation to an applicant's service area or target population. The Data Resource Guide provides data sources on Barrier and Disparity Indicators that are specific to homeless and migrant and seasonal agricultural worker populations. Additionally, HRSA will allow the use of alternate data sources for many of the Barrier and Disparity Indicators, where justified by the presence of more specific and/or current data for the service area or target population.

*Technical Issues on Scales and Benchmarks To Be Used in Needs Scoring*

*Issue:* Several technical changes are proposed in the new NFA Worksheet including revision of the scoring scales used for access Barrier indicators; elimination of some of the disparity indicators formerly used; further definition of the retained indicators; and specification of proposed benchmarks for Disparity indicators.

*Comments:* Comments addressed the inclusion, exclusion, or definition of certain indicators as well as the methods used to define the data ranges, scales, and benchmarks used for scoring the Barrier and Disparities indicators. Comments specific to particular indicators are addressed below. Some comments on the scoring scales suggested that the data ranges were too broad; others suggested that they were too restrictive. Comments also cited jumps in the scoring scales as a problem (*i.e.*, jumps from 3 to 6 to 9 to 12 to 15 points, with no values between). Additional comments suggested that normative values, such as Healthy People 2010 objectives, should be used in the scales and benchmarks rather than values drawn from national distributions by county.

*Response:* In light of the comments received, HRSA has reviewed the proposed scoring scales and developed new data ranges and scoring scales for the Barrier indicators. In addition, we have established standard benchmarks for the Disparities indicators in the revised NFA Worksheet. The revised scales will result in a wider distribution of need scores across applicants. The revised scales also will have fewer ''jumps'' in the scale, to increase sensitivity and to represent the service area needs with greater accuracy. The following breakdown provides further information on how the data ranges, scoring scales, and benchmarks were determined.

• For each of the Barrier indicators, data ranges for each score in the scale are based on comparison to the national county distribution of that indicator. The scoring scales for these indicators have been expanded to eliminate jumps; each integer score from 1 to 15 now has a specified data range. No points will be awarded for a Barrier indicator value better than the national county median for that indicator.

• The benchmarks in the Disparities sections are generally based on the distribution of those indicators across all U.S. counties. Applicants demonstrating that the areas and/or populations to be served have current

values for the indicators that are worse than the national mean or median county value will receive 2 points. For the core indicators, applicants demonstrating that the areas and/or populations to be served have values in the worst quartile of all counties on those indicators will receive an additional point for a total of 3 points for the indicator.

**Specific Comments on Proposed Revisions to the NFA Worksheet Barriers—Indicators and HRSA Responses**

*Population to FTE Primary Care Physician Ratio*

*Issue:* The proposed NFA Worksheet criteria would assign various score levels based on the population to FTE primary care physician ratio within the area to be served, replacing the previous method's assignment of the maximum number of points (14) to all projects that serve an area or population group that has a Health Professional Shortage Areas (HPSA) designation (regardless of the relative levels of shortage of different HPSAs) with no points assigned to those areas and population groups without a HPSA designation.

*Comments:* Comments generally indicated support for the use of a population to FTE primary care physician ratio to discriminate among service areas with different levels of need. Comments also discussed the difficulty in capturing appropriate data for areas that are not already HPSA-designated; raised concerns about how to account for cases where physicians included in the ratios do not accept Medicaid or low-income patients; and the particular problems of frontier and other rural areas (where the presence of a single physician may suggest an adequate local ratio but that physician draws patients from a very wide area). Comments suggested that some areas without existing HPSA designations may need to conduct expensive surveys to obtain comparable data. Finally, comments indicated that the scale did not explain how to score areas with zero physicians.

*Response:* The use of a ratio rather than the presence of a HPSA in the service area allows for scaling of the degree of shortage as well as for assignment of relative scores to non-HPSA designated areas. In general, the ratio accepted by HRSA's Bureau of Health Professions' Shortage Designation Branch is recommended for use for existing HPSAs and Medically Underserved Areas (MUAs) or Medically Underserved Populations (MUPs). Elsewhere, applicants should work with their Primary Care Office or Primary Care Association to establish the correct ratio. In cases where there is no physician serving an area or population group, a second scale is proposed that scores these areas on the basis of their total population. The two scales are consistent with each other and a basic assumption that, in general, 1.0 FTE primary care physician can adequately serve 1,500 people.

*Percent of Population With Incomes at or Below 200 Percent Poverty*

*Issue:* This indicator is proposed as a required indicator for all applicants; previously, it was an optional indicator.

*Comments:* Some comments suggested using the percent of population with incomes below the poverty level rather than percent of population with incomes below 200 percent of the poverty level. Comments also indicated concern that the threshold for the minimum score appears high at 40.5 percent of the population with incomes below 200 percent of poverty and suggested that some points should be received by applicants proposing to serve areas with 30 or 35 percent of the population with incomes below 200 percent of the poverty level.

*Response:* HRSA has reviewed the comments received for changing the minimum score threshold and definition of the poverty level. In order to ensure programmatic consistency with expectations for the sliding fee scale in the program regulations (42 CFR 51c.303(f) and 42 CFR 56.303(f), HRSA has kept the indicator as required for the percent of the population with incomes below 200 percent of the poverty level. To address concerns for a wider distribution of scores, HRSA has also expanded the scoring scale for the percent of population with incomes below 200 percent of the poverty level indicator to give points for all areas providing a positive score for any service area showing a disparity greater than the median percentage value of all U.S. counties.

*Percent of Population Uninsured*

*Issue:* The NFA Worksheet previously asked as an optional indicator for ''Percent of Uninsured Individuals in the Target Population,'' but accompanying instructions stated ''If information is unavailable, use number of individuals below 200 percent of poverty minus the number of Medicaid beneficiaries.'' The proposed NFA Worksheet criteria replaced this with ''Percent of Population Under Age 65 Uninsured,'' and provided a scoring scale where points were given for percentages above the national mean.

*Comments:* Comments indicated the lack of locally applicable data for the variable as a concern. Comments indicated that available data on the uninsured generally included the elderly, rather than excluding them and that most data on the uninsured is available only at the State level or for metropolitan areas. Comments suggested HRSA consider methods for imputing State data to local levels or estimating the uninsured from local data as in the existing NFA Worksheet. Some comments also suggested that the proposed scoring scale was too restrictive.

*Response:* HRSA recognizes the need to ensure population data is available at a local level. Therefore, we will utilize the definition for uninsured percentage used by the Census Small Area Health Insurance Estimates (SAHIE) program, which is a total population percentage. In the Resource Guide that is accompanying the NFA Worksheet, HRSA has provided references for county-level estimates of the uninsured that are available from the Census Bureau including guidance for adjustment of these data to more recent time periods using the SAHIE model. Alternative estimates from States that have done small area estimates and other models are also available, and may be used if more appropriate.

*Distance/Travel Time to Nearest Primary Care Provider Accepting New Medicaid Patients and/or Uninsured Patients*

*Issue:* The existing NFA Worksheet Barrier criteria allows the use of either travel time or distance to nearest source of care accessible to the target population. The proposed version of the NFA Worksheet included only ''Distance (miles) to nearest provider accepting new Medicaid patients and/or uninsured patients,'' with no reference to travel time. Further, the point scale had been revised for this indicator.

*Comments:* Comments supported reinstating the travel time alternative to the distance criterion. This was supported both for urban areas, where the use of travel time by public transportation was advocated, and for rural areas, to allow consideration of mountainous terrain and winding roads. Some comments advocated using distance/travel time to nearest source of care with a sliding fee scale, rather than to nearest providers accepting Medicaid or uninsured patients; others suggested distance/travel time to nearest provider in an area not HPSA-designated; still others pointed out that any such

qualification should take into account numbers of patients seen and would require expensive surveys. Comments suggested that the point scale should be expanded, in part to sharpen the scoring differences between those (often sparsely-populated) areas with distances/travel times to nearest care on the order of 60 miles/60 minutes, as compared with areas with distance/travel time to care closer to 30 miles/30 minutes. Comments raised questions about what the origin point should be for measurement of distance (or time) to nearest source of care—at the location of the proposed access point, or at the population center of the proposed service area—and whether sources of care within the service area must be considered for this calculation if the service area has been designated as a HPSA, MUA, or MUP.

*Response:* HRSA will utilize both distance and travel time to nearest primary care provider accepting new Medicaid patients and/or uninsured patients as indicators and will utilize scoring scales for each indicator that are appropriate for applicants proposing to serve urban, suburban, rural, and frontier areas. Both distance and travel time to nearest source of care should be computed from the location of the proposed access point rather than from the population center of the proposed service area. The calculation of average travel time should consider distance between the proposed access point as the origin and the specific location of the nearest primary care provider accepting new Medicaid patients and/or uninsured patients as the destination.

*Percent of Population Linguistically Isolated*

*Issue:* The existing NFA Worksheet criteria used ''Percentage of population aged 5 years or older who speak a language other than English at home'' as a measure of language barriers to accessing primary care services. The revised NFA Worksheet proposed the variable ''Percent of Population Linguistically Isolated,'' but did not include the explicit definition of this variable.

*Comments:* Comments suggested HRSA include a standard definition, citing the fact that there are several related census variables. Some comments supported the proposed change, indicating that linguistic isolation, as measured by the percent of people who do not speak English or do not speak it well, is a more relevant access barrier gauge than the percent of people who speak a language other than English at home which may not clearly indicate inability to speak or understand English. Some comments suggested that because there is a small number of households nationally that meet the more restrictive definition of linguistic isolation (defined as any household in which no person 14 years old or over speaks English ''Well'' or ''Very Well''), the previous indicator should be retained. Comments also suggested that either variable often has limited importance in rural areas.

*Response:* In response to comments for an explicit definition of ''linguistic isolation,'' HRSA has chosen a measure utilizing local data that is readily available and that accurately represents need across different service area. HRSA has decided to utilize the indicator ''Percentage of people 5 years and over who speak a language other than English at home,'' because of the greater robustness of the data and the availability of data from the Census at the county and Census Tract level. HRSA has also modified the scoring scale to reflect the distribution of the indicator at the county level.

*Standardized Mortality Rate or Ratio/Life Expectancy/Age-Adjusted Death Rate*

*Issue:* The FRN identified ''Standardized Mortality Rate'' in the text and ''Standardized Mortality Ratio'' in the accompanying table, but did not explicitly define either indicator making it unclear which factor was to be utilized. In addition, the breakpoints specified for this variable appeared to be consistent with the variable ''Life Expectancy'' in years (used in the existing NFA Worksheet criteria), rather than with a mortality rate or ratio.

*Comments:* Comments requested clarification and indicated that there was limited data availability on ''Standardized Mortality Rate'' or ''Standardized Mortality Ratio'' at the State level. Some comments suggested age-adjusted mortality rate as an alternate indicator while others suggested continued use of the Life Expectancy variable.

*Response:* HRSA acknowledges the comments regarding the need for greater clarity on the specific indicator that will be used. Therefore, we have decided to utilize age-adjusted death rate as the Barrier measure because this data is available at the local level. In contrast, ''Life Expectancy'' data is not regularly reported for small areas. Age-adjusted death rate is available indirectly from the National Center for Health Statistics for each U.S. county (using their analysis facilities) and from most State's vital statistics branches. These rates are expressed as a number of deaths per 100,000 population. The data for individual counties can be downloaded from the Centers for Disease Control and Prevention (CDC) WONDER Web site and has been referenced in the Resource Guide accompanying the NFA Worksheet.

*Unemployment Rate*

*Comments:* Comments indicated several concerns with the unemployment rate indicator including that underemployment and underreporting are issues in many low-income, low-access areas; the unemployment rate does not reflect situations where individuals are working at minimum wage or at several part-time jobs because of inability to find one full-time job (most part-time employment provides little or no fringe benefits such as health insurance); and available county-level data do not necessarily reflect the actual rates for target low-income populations within larger service areas.

*Response:* HRSA has decided to utilize unemployment rate as an access Barrier indicator with the scoring scale adjusted to provide points for rates above the national median for counties. Unemployment data rates are captured on a regular basis and seasonal and temporal trends are included in monthly unemployment statistics gathered by each State, unlike other data which are not updated as frequently. The regularity of the reporting often captures short term economic trends at the local level. Unemployment rates for specific population segments are less often available but are reported in some areas based on specific survey data.

*Waiting Time for Public Housing*

*Issue:* Only applicants requesting funding to serve homeless or public housing residents would be allowed to choose waiting time for public housing as a Barrier indicator, a choice previously available to all applicants.

*Comments:* One comment suggested replacing waiting time with the ratio of available housing units to number of families on the waiting list. It was also suggested that the waiting time indicator was not an effective indicator in areas with no public housing. Some comments also recommended that this indicator should be available to all applicants, since the availability of affordable housing is an issue for all low-income populations.

*Response:* HRSA has decided to make this indicator available for all applicants and to redefine the indicator as ''Waiting Time for Public Housing Where Public Housing Exists,'' so that it may only be used by applicants whose

proposed project would serve areas where public housing exists.

*Comments on Proposed Disparities Indicators on the NFA Worksheet and HRSA Responses*

*General Issue:* The existing NFA Worksheet criteria allowed applicants to provide responses to up to 10 out of a list of 27 disparity factors, including an ''other'' category definable by the applicant. Applicants were awarded 3 points for each of the responses that exceeded a threshold defined by the applicant. The FRN proposed to (a) Require the applicant to provide data on five ''core'' disparity factors and (b) allow applicants a choice of 5 out of 7 additional disparity factors or an ''other'' factor specifiable by the applicant. The five core factors were asthma, diabetes, cardiovascular, birth outcomes, and mental health; the FRN listed one specific indicator measure each for asthma, diabetes, and cardiovascular, a choice of two for birth outcomes, and a choice of two for mental health. One indicator was also specified for each of the 7 optional disparity factors. With the exception of two factors, national benchmarks (based on the national mean or national county median) were proposed for each required or optional indicator measure. In order to receive points, an applicant would need to provide a response for each indicator whose value exceeded its national benchmark. In addition, for the core factors, a higher ''severe threshold'' was defined with an additional point awarded for response that exceeded the severe threshold.

*Comments:* Comments were generally supportive of the overall approach of reducing the number of factors considered, but urged caution about the choice of specific indicators used to measure each factor, especially the five core factors. Comments raised concern regarding the availability of data for many of the indicators listed in the FRN, noting that a specific indicator for a factor such as asthma might be available in some States/areas but not others. These comments suggested a need for more flexibility for applicants to select available indicators of a particular factor. Other comments suggested HRSA reconsider which indicators should be included under the ''core'' factors and which should be included under ''optional'' factors. Some comments indicated interest in adding factors relevant to oral health, HIV/AIDS, and cancer screening to the ''optional'' group factors.

*Response:* As indicated in the comments, HRSA recognizes the need to ensure that the proposed disparity indicators are applicable and appropriate for each given service area, and that data is available at a local level for each indicator. To accommodate these concerns and allow for some flexibility within the revised NFA Worksheet, HRSA will present several alternative indicators under each core Disparity factor and additional choices under the optional Disparity factors, allowing applicants to choose an indicator best demonstrating need in their proposed service area. The revised approach is intended to provide a more balanced and complete picture of the health status and health care access needs of a community or population.

Five (5) required categories of Disparity factors have been created that include related measures and allow applicants to choose one from a set of several optional indicators within each category. These categories are: Diabetes/Obesity; Cardiovascular Disease; Asthma/Respiratory Disease; Prenatal/Perinatal Health; and Mental Health/Substance Abuse/Behavioral Health. These five categories include direct measures of need and population-based rates of morbidity and mortality as well as measures that contribute to health care need. Most of the categories include both a mortality rate and a hospitalization rate, and include indicators that were commonly selected in the original NFA Worksheet. The benchmarks for the mortality rates are drawn from national county-level distributions, and benchmarks for the hospitalization rates from the Agency for Healthcare Research and Quality Prevention Quality Indicators.

*Asthma*

*Comments:* Comments stated the proposed asthma prevalence data would be difficult to obtain and suggested alternatives including State Behavioral Risk Factor Surveillance System (BRFSS) data on the number of adults reporting asthma; emergency room visits for asthma; preventable asthma hospitalization data; or school health data that may be available by county for the school-age population.

*Response:* In response to the comments received, HRSA has decided to utilize multiple asthma-related indicators for which data is available at a local level, including adult asthma prevalence, adult or pediatric asthma hospital admission rates, 3 year average pneumonia death rate, and several other alternatives. Data sources for each indicator have been provided in the Resource Guide.

*Diabetes*

*Comments:* Comments suggested that diabetes prevalence be used as an indicator rather than diabetes mortality. Comments also suggested that if a diabetes mortality measure is used, it should include only deaths where diabetes is the underlying cause or is a contributing factor as indicated in Healthy People 2010 Objective 5–5.

*Response:* In light of the comments received, HRSA has decided to utilize several indicators that allow applicants flexibility to choose either diabetes mortality or diabetes prevalence. Data describing diabetes prevalence may be available to applicants either through the BRFSS reporting system or from special studies and surveys. In addition, some states report BRFSS data at the county level. The available data sources for each option have been provided in the Resource Guide.

*Cardiovascular Disease*

*Comments:* Comments questioned what International Classification of Diseases (ICD) codes the proposed indicator of ischemic death rate was meant to encompass and suggested use of a more comprehensive CDC rate which would also include rheumatic, hypertensive, and pulmonary heart disease. Comments also suggested the use of coronary heart disease death rate for consistency with Healthy People 2010.

*Response:* Based on comments received, HRSA has decided to utilize multiple indicators of cardiovascular disease which correspond to the CDC definition, listing the ICD Codes where applicable. The indicator options include indicators for rheumatic, hypertensive, ischemic, pulmonary, and coronary heart diseases. HRSA has provided available and appropriate data sources for each indicator in the Resource Guide.

*Birth Outcomes*

*Comments:* Comments presented several questions about the proposed indicators including whether multi-year rates were to be used for Infant Mortality Rate (IMR) and Low Birth Weight (LBW) and whether the term ''pregnancy'' was meant to include miscarriages and abortions.

*Responses:* Based on the comments received, HRSA has decided to utilize multiple indicators including IMR, percent births that are LBW, and percent of pregnant women entering prenatal care after the first trimester. Each State's health authority will have local area IMR and LBW data that will allow for reporting of these rates. Three-year or 5-

year rates are recommended to avoid extreme rates for low population areas; this is specifically required for infant mortality rate. References providing local data nationally have been included in the Resource Guide.

*Mental Health*

*Comments:* Comments stated that data on prevalence of depression was difficult to obtain, while data on suicide rate was fairly readily available. Comments also suggested that data on shortages of mental health providers be used as a measure.

*Response:* Based on the comments received and varying data availability, HRSA has decided to utilize multiple indicators including depression prevalence, suicide rate, and several substance abuse indicators. There are locally applicable surveys that focus on depression or suicide intention, and HRSA has included data sources for all indicator options in the Resource Guide.

*Teenage Pregnancy Rate*

*Comments:* Comments requested clarification of what was intended for the definition of teenage pregnancy stating that different States use different age ranges.

*Response:* As the comments indicate, the classification of teen birth rates does not have a standard definition. States report varying age ranges. However, data are usually available for births by single year groupings. HRSA has decided to utilize percent of births to mothers age 15 to 19 as an indicator within the core category of Prenatal/Perinatal Health because it was viewed to be the most appropriate indicator of need for this category. This age range can be constructed from the single year groupings generally reported by States.

*Substance Abuse*

*Comments:* Comments stated that very little data on this is readily available and suggested the use of data on alcohol-related fatalities, drug-related arrests, and State youth risk behavioral surveys.

*Response:* In light of the comments, HRSA has decided to utilize several indicators of substance abuse within the core category of Mental Health/Substance Abuse/Behavioral Health discussed above. HRSA has included data sources for indicator options in the Resource Guide.

*Immunization Rate*

*Comments:* Comments suggested that the benchmark for immunization rate be updated to the current recommendation for children 19 to 35 months to receive 4 DTP, 3 Polio, 1 MMR, 3 Hib, and 3 Hepatitis B immunizations.

*Response:* To address the comments, HRSA has decided to utilize a benchmark that has been updated to the 4–3–1–3–3 series. Data for immunization is not consistently available at the small area level, but some States and localities have developed immunization registries where these data can be captured.

*Hypertension Rate*

See Comments and Response above for Cardiovascular Disease.

*Rate of Respiratory Infection*

*Comments:* Comments requested clarification on whether this indicator was meant to include pneumonia alone, as implied by the benchmark used (3-year mortality rate from pneumonia). Comments also suggested that finding appropriate data for the indicator cited in the FRN (''rate of respiratory infection'') could be a problem in States that use a combined mortality rate for deaths from pneumonia and influenza rather than for pneumonia alone. Comments requested clarification of the indicator and benchmark and one suggested an annual rate versus a 3-year rate while another suggested a 5-year rate for rural areas.

*Response:* In consideration of the comments, HRSA has decided to allow the use of respiratory infection as an indicator within the core category of Asthma/Respiratory Disease. Further, HRSA has decided to include the 3-year average mortality rate for pneumonia as 1 of the 7 indicators that can be used to address the core category of Asthma/Respiratory Disease.

*Obesity*

*Comments:* Comments noted that obesity is difficult to measure at the community level citing several issues regarding the inconsistency of data availability including: In most cases, no county-level data is available; State-level data is typically only available for adults through BRFSS; local-level data is generally available for children only.

*Response:* HRSA recognizes that obesity can be difficult to measure at the community level. Therefore, HRSA has decided to utilize obesity as only one indicator within the core factor of Diabetes/Obesity discussed above. We note that some States provide small area estimates of obesity via their BRFSS data. In addition, in some communities, special studies of obesity prevalence may be available.

*Percent of Population Aged 65+*

*Comments:* One comment noted that the elderly are covered by Medicare and suggested replacing this indicator with ''Percent of Population under age 18.'' Another comment suggested moving this indicator to the Barriers section, pointing out that health care needs increase significantly with age and the elderly in rural areas have difficulty with access because of lack of public transportation.

*Response:* Although the elderly are covered by Medicare, usage of health care services tends to be greater for the elderly than other populations. Therefore, HRSA has decided to retain percent of population aged 65+ as an optional Disparity indicator.

*Additional Disparity Factors Suggested*

*Cancer Screening*

*Comments:* A number of comments recommended including a cancer-related indicator as an alternative factor; one suggested that disease prevalence or incidence be counted instead of a death rate.

*Response:* In response to the comments, HRSA has decided to utilize multiple indictors for cancer screening including: no pap test for women 18+ in past 3 years; no mammogram for women 40+ in past 2 years; and no fecal occult blood stool test for adults 50+ in the past 2 years.

*Unintentional Injury Deaths*

*Comments:* Comments supported inclusion of unintentional injury deaths as a Disparity indicator.

*Response:* As the comments indicate, unintentional injury deaths can be an important Disparity indicator. Therefore, HRSA has decided to retain unintentional injury deaths as an optional Disparity indicator. Mortality indicators for unintentional injury are compiled and reported for counties and other jurisdictions. These data are linked to the vital statistics reporting systems but are often listed separately.

*Oral Health*

*Comments:* Comments suggested that oral health is an important marker for overall health status and many health centers are placing greater emphasis on oral health interventions.

*Response:* HRSA agrees with the comments and thus has decided to utilize percent of population without a dental visit in the last year as an optional Disparity indicator for oral health.

*HIV Seroprevalence*

*Comments:* Comments suggested including a measure of HIV/AIDS

impact and/or other indicators of communicable disease including sexually transmitted disease.

*Response:* Based on the comments received, HRSA has decided to utilize HIV infection prevalence as a Disparity indicator. HRSA has included data sources for HIV infection prevalence in the Resource Guide.

*Other Disparity Factors*

*Comments:* Comments noted that the proposed NFA Worksheet no longer included certain health-related measures that were important to specific communities or special populations and that some provision should be made to allow applicants to present health disparity data that was specific to the community/population to be served.

*Response:* In recognition of the comments, HRSA has decided to utilize two ''other'' indicators as optional Disparity factors.

**Summary of Proposed Changes to the NFA Worksheet and Application Review Process**

NAP applicants are expected to provide comprehensive primary and preventive health care services in areas of high need that will improve the health status of the medically underserved populations to be served and decrease health disparities. The new NFA Worksheet is designed to present a balanced and complete picture of the health status and health care access needs of the targeted community or population. Through the new NFA Worksheet, HRSA will continue to request data on critical access/barriers to care and health disparities of populations to be served by NAP applicants. The NFA Worksheet is intended to provide further standardization while also allowing flexibility for applicants to represent the unique and significant health care needs of the community/population to be served.

Future NAP applications will have the revised NFA Worksheet scored by the ORC as part of the complete assessment of the application. The NFA Worksheet score of up to 100 points will be converted to account for up to 25 points of the overall score for the application. An additional 10 points will be assigned to the narrative description of Need in the community/population to be served. Through this method, the community/need for access to primary care services will reflect 35 percent of the total application score. While it is important that all NAP applicants demonstrate the need for comprehensive primary health services in the community/population to be served, it is also essential that applications be evaluated on their plan to successfully implement a viable and legislatively compliant program for the delivery of the comprehensive primary health services. Therefore, the remaining 65 points will focus on the applicant's plan to address the identified health care needs of the community/population through the development of a viable and compliant health center new access point.

The final NFA Worksheet is available on the HRSA Web site online at: *http://www.bphc.hrsa.gov/chc*. This NFA Worksheet reflects comments received from the FRN and the HRSA decisions discussed in this Notice. Future NAP application guidances will also reflect this NFA Worksheet and the revised weighting of Need relative to the other criteria used in the NAP application scoring process.

**FOR FURTHER INFORMATION CONTACT:** Preeti Kanodia, Division of Policy and Development, Bureau of Primary Health Care, HRSA. Ms. Kanodia may be contacted by e-mail at *PKanodia@hrsa.gov* or via telephone at (301) 594–4300.

Dated: April 19, 2006.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. E6–6212 Filed 4–25–06; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; 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 General Medical Sciences Council.

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 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 Advisory General Medical Sciences Council.

*Date:* May 18–19, 2006.

*Closed:* May 18, 2006, 8:30 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20852.

*Open:* May 18, 2006, 10 a.m. to 2:30 p.m.

*Agenda:* For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, concept clearance presentations, and other business of the Council.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20852.

*Closed:* May 18, 2006, 2:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20852.

*Closed:* May 19, 2006, 8:30 a.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20852.

*Contact Person:* Ann A. Hagan, PhD, Associate Director For Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and

Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 18, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–3912 Filed 4–25–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG–2005–22732]**

## Domestic Vessel Passenger Weights-Voluntary Interim Measures

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice; request for public comments.

**SUMMARY:** The Coast Guard announces voluntary interim measures for certain domestic vessels to account for increased passenger and vessel weight when determining the number of passengers permitted. The Coast Guard also requests public comments on the interim measures.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 26, 2006.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2005–22732 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call Mr. William Peters, Naval Architecture Division, G–PSE–2, Coast Guard, telephone 202–267–2988. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2005–22732) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

*Viewing comments and documents:* To view comments, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

### Background and Purpose

*Increased Passenger Weight*

The total number of persons permitted on a small passenger vessel (inspected and certificated under 46 CFR Subchapters T & K) is limited by a number of different design factors, one of which is stability. Stability characteristics and limitations, including any restrictions on the number of passengers permitted, are provided to the vessel operator most often in a stability letter or a Coast Guard Certificate of Inspection (COI). The Coast Guard typically evaluates a vessel's stability through rigorous engineering calculations (46 CFR parts 170 and 171 (Subchapter S) stability requirements) or, for vessels not more than 65 feet in length and pontoon vessels, operated in a protected environment, through a performance test conducted by Officers in Charge, Marine Inspection (OCMIs) (46 CFR part 178). This test is either a simplified stability proof test (SST) or a pontoon simplified stability proof test (PSST).

In all cases, an average weight per person is assumed to estimate the anticipated vessel loading (the total test weight in the SST and PSST) and its impact on stability. Currently, Coast Guard regulations governing SSTs and PSSTs use an average weight per person of 160 pounds, except that an average weight per person of 140 pounds is used if the vessel operates exclusively on protected waters and the passenger load consists of men, women, and children. These weights were established in the 1960s. A Centers for Disease Control and Prevention (CDC) report issued in October 2004 concluded that, in the United States, the ''average weight has increased dramatically in the last 40 years with the greatest increase seen in adults.'' The increase in passenger and crew weight has an adverse effect on the stability of passenger vessels due to several factors, including increased vertical center of gravity, reduced freeboard, and increased passenger heeling moment.

On March 6, 2004, the small passenger pontoon vessel *Lady D*, carrying 25 persons, capsized in high winds in Baltimore harbor while a small craft warning was in effect. Five persons died and four others suffered serious injuries. Both the Coast Guard and the National Transportation Safety Board (NTSB) launched investigations into the cause of the accident.

On December 20, 2004, the NTSB issued Safety Recommendation M–04–04, which stated that the current 140 pound per person weight allowance for operations on protected waters does not reflect actual loading conditions. The NTSB recommended that the Coast Guard revise its guidance to OCMIs for determining the maximum passenger capacity of small passenger pontoon vessels either by: (1) Dividing the vessel's simplified stability proof test weight by 174 pounds per person, or; (2) restricting at the time of loading the actual cumulative weight of passengers and crew to the vessel's total test weight.

In correspondence to the NTSB dated April 7, 2005, the Coast Guard concurred that the average weight per

person used in SSTs and PSSTs needed to be updated, and noted that an internal Coast Guard study initiated shortly after the *Lady D* incident identified the same issue. The Coast Guard also pointed out that implementation of the needed changes would be more complex than the NTSB recommendation entailed, and that the Coast Guard had chartered a working group to assess the potential impacts of regulatory changes to a higher passenger weight. The assessment of the working group is available in the docket.

In a letter dated July 26, 2005, the NTSB acknowledged the Coast Guard initiated action to revise the passenger weight standard, and classified the Coast Guard's response to Safety Recommendation M–04–04 as acceptable. In order to gather the information and perform the analyses required by law before issuing regulations, the Coast Guard contracted in September 2005 with BMT Designers and Planners to conduct an engineering analysis of the impact of increasing average passenger weight, assess alternative implementation strategies, and conduct an in-depth cost-benefit analysis.

On October 2, 2005, the New York State certified monohull passenger vessel *Ethan Allen* (whose Coast Guard COI expired in 1981, and was not required to be inspected by the Coast Guard), carrying 49 passengers, capsized on Lake George and sank, killing 20 people. The NTSB has indicated that overloading due to increased passenger weight was a potential contributing cause of the accident, but has not yet issued its report.

The Coast Guard is committed to a high priority rulemaking to develop new regulations and interim measures to address increased passenger weight problems, and has established a regulatory team. A notice describing the consultant's ongoing study and the Coast Guard's approach to revising the passenger weight standard was published in the **Federal Register** on October 27, 2005 (70 FR 61987).

On March 7, 2006, the NTSB held a meeting to consider its report on the capsizing of the *Lady D*. In the report's synopsis, the NTSB concluded that the use of an obsolete average weight standard for persons on small passenger vessels caused the *Lady D* to be more susceptible to capsizing on the day of the accident. The combined effects of the excessive load carried and the wind and wave conditions experienced at the time of the accident caused the capsizing, according to the synopsis. In addition to recommendations based on the conclusions summarized above, the NTSB recommended that the Coast Guard identify a method for determining the maximum safe load condition of a small passenger vessel at the time of loading.

*Reasonable Operating Conditions*

Coast Guard OCMIs have the authority to impose restrictions on the operating condition of any small passenger vessel in their zones of responsibility. For those vessels which are designed for operation only on protected waters and mild conditions, which include pontoon vessels, the COI usually includes a restriction limiting the vessel's operation to ''reasonable operating conditions.''

*Pontoon Vessels*

Pontoon vessels, originally developed for use as recreational boats on small lakes and rivers, over time came to be used as small passenger vessels. Prior to 1996, the Coast Guard published guidance on pontoon vessel stability in its Marine Safety Manual (MSM) *http://www.uscg.mil/hq/g-m/nmc/pubs/msm/*, but there were no Coast Guard regulations specifically for pontoon vessels. The MSM guidance dealt only with vessel heeling due to passenger movement and did so conservatively, but did not include a wind component because passenger pontoon vessels were designed to operate on restricted routes where mild conditions prevail.

Because of the growth in the number of pontoon vessels, the MSM stability guidance was replaced with regulations in CFR Title 46, Subchapter T, in 1996. Those regulations also do not include a wind component because of the reasons outlined above. In contrast, the stability regulations for all other small passenger vessels specify a minimum wind component and a passenger heeling component because those vessels are permitted to operate with fewer restrictions, and are designed to operate in limited wind and wave environments.

*Immediate Corrective Actions for Pontoon Vessels*

To assess the need for immediate action to protect the safety of passengers and crew on pontoon vessels, a Coast Guard working group, established in March 2004, examined the stability requirements for that vessel category. The group recommended that information be provided to OCMIs around the country to ensure that stability tests and standards were being appropriately and consistently implemented for pontoon vessels. Coast Guard G–MOC Policy Letter 04–10 entitled ''Evaluation of Stability & Subdivision Requirements for Small Passenger Vessels Inspected Under 46 CFR Subchapter T'' resulted from the group's efforts. In those instances where the Coast Guard determined that stability standards had been incorrectly applied, it took immediate corrective action.

*Analysis of Passenger Weights*

One of the two alternatives suggested by the NTSB in Recommendation M–04–04 for determining the maximum number of occupants of small passenger pontoon vessels was to use the per-person weight allowance for a present-day average adult. NTSB recommended use of the per-person weight allowance stipulated in Federal Aviation Administration (FAA) Advisory Circular 120–27D which, for large aircraft, is 174 pounds per person without an allowance for personal effects or carry-on luggage. New Recommendation 1 in the NTSB's March 7, 2006 synopsis of its report on the *Lady D* incident suggests that passenger capacity for domestic passenger vessels be calculated based on a statistically representative average passenger weight standard that is periodically updated.

The CDC National Health and Nutrition Examination Survey (NHANES) program is a widely accepted and authoritative source for weight data on the U.S. population. The 2004 CDC NHANES report on surveys conducted in the United States between 1960 and 2002 stated that ''on average, both men and women gained more than 24 pounds between the 1960s and 2002.'' (See CDC *Advance Data*, Number 347, dated October 27, 2004.) For a 50/50 male/female mix and for adults between 20 and 74 years old, an average weight of 177.7 pounds without clothing is calculated from the data published in the NHANES report. According to this report, the mean weight of children of all ages also increased substantially between 1963 and 2002. Teenage boys and girls aged 12–17 increased 15 and 12 pounds, respectively, to mean weights of 141 and 130 pounds, respectively, between the 1960s and 2002.

Additionally, a 2003 New Zealand Civil Aviation Authority survey of passenger weights reported an average weight without carry-on bags or personal effects of 176.8 pounds. Transport Canada, Canada's federal transportation agency, recommends assuming an average weight of 182.5 pounds per person in summer and 188.5 pounds in winter for small aircraft. Transport Canada's weights included an allowance for clothing but not luggage.

An average weight of approximately 185 pounds is obtained when the most current CDC average weight of 177.7 pounds is added to the FAA average clothing weight of 7.5 pounds. (See FAA Advisory Circular 120–27E, paragraph 201, dated June 10, 2005 (superseding FAA AC 120–27D). Approximately the same weight is obtained when the CDC average adult weight gain of 24 pounds is added to the 160-pound average established in the 1960s. The accuracy of this result is further confirmed by the weights recommended by government authorities in Canada and New Zealand.

The Coast Guard considered a report by the Coast Guard Passenger Weight Working Group, mentioned above. The report, dated May 19, 2005, used an average passenger weight of 190 pounds to assess the potential impacts of regulatory changes. This average passenger weight was based on the FAA's use in AC 120–27D of an average winter passenger weight of 189 pounds, not including carry-on bags and was noted in the report to be conservative. The current FAA Circular, AC 120–27E, also uses an average winter passenger weight of 189 pounds without carry-on bags, and includes allowances of 10 pounds each for clothing and personal items. (See AC 120–27E, paragraphs 201 and 205, and Tables 2–1 and 2–2.)

The FAA arrived at the standard average passenger weights used in AC 120–27E after performing certain mathematical calculations using the CDC's NHANES data rather than rely on the average weights published by the CDC in *Advance Data* Number 347. (See AC 120–27E, Appendix 2). Based upon the Coast Guard's evaluations of all available weight studies, though, the 185 pound average appears at this time to be the most accurate and appropriate average weight for evaluating the stability of small passenger vessels.

For these reasons, the Coast Guard recommends that, for the purposes of this notice, the assumed weight per person should be 185 pounds for a mix of men and women.

*Increased Vessel Weight*

Independent of our review of increased passenger weight, the Coast Guard identified vessel weight growth, particularly on pontoon vessels, as a significant factor impacting stability. A vessel must be kept in the same physical condition as when its stability letter was issued in order to remain in compliance with Federal regulations. Vessel operators are required to receive OCMI approval on all vessel alterations for this reason. If a vessel becomes heavier and the operating load of passengers is not similarly reduced, the possibility exists that operation beyond the vessel's regulatory stability limits will occur. This situation was discovered on some pontoon vessels and, after OCMIs required updated PSSTs, the total persons permitted to be carried had to be reduced between 22 to 43 percent.

Overall, this degree of reduction probably stems from both unrecorded alterations and differences in vessel weight related to inconsistencies and variances in construction, design, outfit, and potential absorption of water by porous vessel materials such as wood or foam. Pontoon vessels are particularly sensitive to weight growth due to their typical round hull geometry. However, weight growth is an important factor to monitor on all passenger vessels. The Coast Guard has already directed the re-evaluation of most pontoon vessels and is considering methods for better tracking of vessel weight.

*Advisory and Regulatory Actions*

The Coast Guard is currently engaged in a rulemaking that will thoroughly assess the potential consequences of revising stability regulations for all domestic passenger vessels to account for increased passenger and vessel weight. These changes are estimated to affect as many as 7,000 vessels operating nationwide. While the Coast Guard places paramount importance on the safety of passengers and crew, the Coast Guard is required by law to assess the likely effects of such a far-reaching change, including the economic implications for the passenger vessel industry.

Because of the length of the regulatory change process, much of which is mandated by law, and the need for timely action to ensure public safety, the Coast Guard is also committed to institute interim measures to address those vessels at highest risk of stability hazard from increased passenger weight, including small passenger pontoon vessels. The approach of the 2006 summer season makes the need to account for increased passenger weight all the more urgent.

For these reasons, the Coast Guard, through publication of this notice, is advising owners and operators of small passenger vessels of potentially unsafe conditions, including increases in passenger and vessel weight, and voluntary interim measures which may be used to address these conditions and to safeguard the public.

**Voluntary Measures for Prudent Operation**

The 140 and 160 pound average weights may not reflect actual loading conditions. In addition, some small passenger vessels may have experienced weight growth since their stability was evaluated. Consequently, the total number of persons permitted to be carried, as stated in the COI, might exceed the anticipated vessel loading of many vessels.

The Coast Guard has, therefore, determined that it would be prudent for owners and operators of all small passenger vessels for which passenger weight is a limiting stability factor to voluntarily re-evaluate the passenger capacity for their vessels. In addition, the Coast Guard expects prudent operators to conscientiously monitor the wind and wave conditions. This notice serves to assist owners and operators of these vessels in complying with the operating requirements of 46 CFR 185.304 or 46 CFR 122.304 and the standards of competence and conduct detailed in 46 CFR part 5.

To assist the prudent owner and operator, the Coast Guard recommends the following:

*Vessels Evaluated Using the SST or PSST*

Owners and operators of all pontoon vessels, and small passenger vessels not more than 65 feet in length, that met simplified stability requirements using either 140 or 160 pounds, should voluntarily restrict the maximum number of passengers permitted on board by:

(1) Changing your passenger capacity to a reduced number by dividing the total test weight by 185 pounds; or

(2) Changing your passenger capacity to a reduced number equal to 140 divided by 185 times the current number of passengers permitted to be carried. If the total test weight was based on 160 pounds per person, the multiplier may be taken as 160 divided by 185; or

(3) Weighing persons and effects at dockside prior to boarding and limiting the actual load to the total test weight used in the vessel's SST or PSST.

*Vessels Whose Stability Has Been Evaluated According to Subchapter S*

Owners and operators of small passenger vessels should voluntarily review their stability guidance and ensure that excessive passenger weight is not carried or that an increased average passenger weight of 185 pounds will not reduce stability below Subchapter S requirements.

*All Small Passenger Vessels*

Owners and operators of all small passenger vessels should:

(1) For passenger vessels certificated for operation only on protected waters,

voluntarily operate only in ''reasonable operating conditions,'' which, do not include the conditions listed below:

- A small craft advisory is in effect;
- Wind gusts over 30 knots (35 mph);
- Waves over two feet; or
- Sustained winds over 18 knots (21 mph).

(2) Notify the OCMI if any significant structural or equipment changes have been made to the vessel since the stability was evaluated by the owner or operator and approved by the Coast Guard. The OCMI will determine whether to adjust the passenger load accordingly or require a new stability test.

Owners and operators may consider voluntarily re-evaluating the vessel's stability, which may include the performance of a new SST or PSST or a new evaluation according to 46 CFR subchapter S using an assumed weight per person of 185 pounds.

In general, these voluntary interim guidelines reflect NTSB's recommendations dated March 7, 2006, with one exception. The NTSB recommended the use of a method such as a load mark on the hull to determine the maximum safe load condition. The Coast Guard is evaluating these loading marks to determine if they are adequate to accurately assess whether or not the total test weight is exceeded, which could create an overload condition. Additionally, the Coast Guard will consider including a method of periodically updating the average passenger weight as part of the upcoming rule.

The Coast Guard will perform outreach to owners and operators of all such vessels as soon as possible to advise them of this notice. Vessel owners and licensed operators are encouraged to comply with these guidelines until new regulations are promulgated. Local OCMIs are always available for assistance if the need arises.

**Upcoming Rule**

The Coast Guard is in the process of preparing a rule that would amend its regulations to address the stability issues caused by increases in passenger and vessel weight. This rule would apply to the same group of small vessels covered by the voluntary procedures described above, as well as all pontoon vessels. The Coast Guard tentatively intends that the rule's provisions be, for the most part, similar to those of the voluntary procedures above. The rule may also include provisions explicitly providing for prioritizing stability evaluations among categories of vessels, including the performance of new SSTs or PSSTs.

Dated: April 20, 2006.

**Thomas H. Gilmour,**

*Rear Admiral, Assistant Commandant for Prevention.*

[FR Doc. 06–3926 Filed 4–25–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4837–D–59]**

## Amendment, Consolidated Delegation of Authority for the Office of Community Planning and Development

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Amendment to Consolidated Delegation of Authority for the Office of Community Planning and Development.

**SUMMARY:** This notice amends the existing Consolidated Delegation of Authority for Community Planning and Development to add the Renewal Communities, urban Empowerment Zones, and urban Enterprise Communities (RC/EZ/EC) Initiative and Technical Assistance Awards to the list of programs delegated to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development. This amendment also authorizes the General Deputy Assistant Secretary to further redelegate any of the authority delegated under the Consolidated Delegation of Authority, as amended.

**DATES:** *Effective Date:* March 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Karen Daly, Director of Policy Development and Coordination, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7240, Washington, DC 20410–7000, (202) 708–1817. This is not a toll-free number. For those needing assistance, this number may be accessed via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** On September 16, 2003 (68 FR 54238), the Department published a Consolidated Delegation of Authority for Community Planning and Development programs. This notice amends the existing Consolidated Delegation of Authority for Community Planning and Development by adding the Renewal Communities, urban Empowerment Zones, and urban Enterprise Communities (RC/EZ/EC) Initiative and Technical Assistance Awards to the list of programs delegated to the Assistant Secretary and the General Deputy Assistant Secretary for Community Planning and Development. The Consolidated Delegation authorized the Assistant Secretary to further redelegate any authority included therein, excluding those authorities expressly excepted. This amendment similarly authorizes the General Deputy Assistant Secretary to further redelegate any delegated authority, excluding those expressly excepted. This notice also clarifies the authority excepted from the Consolidated Delegation and updates the list of prior delegations of authority superseded by the Consolidated Delegation. Accordingly, the Secretary amends the Consolidated Delegation of Authority for CPD programs at 68 FR 54238 (September 16, 2003), as follows:

**Section A. Amendment to Consolidated Delegation of Authority**

At Section A of 68 FR 54238–9 (September 16, 2003), under the heading entitled ''Authority'':

1. Paragraph 6 is amended to read as follows:

6. The Renewal Communities, urban Empowerment Zones, and urban Enterprise Communities (RC/EZ/EC) Initiative as authorized under title 26, subtitle A, chapter 1, subchapter U of the Internal Revenue Code, as amended, 26 U.S.C. 1391 *et seq.* with respect to urban Empowerment Zones and urban Enterprise Communities and title 26, subtitle A, chapter 1, subchapter X of the Internal Revenue Code, as amended, 26 U.S.C. 1400E *et seq.* with respect to Renewal Communities; and grants for urban Empowerment Zones as provided for in annual HUD appropriations acts (*e.g.*, Consolidated Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003).

2. After paragraph 19(f), a new paragraph is added to the list of programs under which authority is delegated as follows:

20. Technical Assistance Awards as authorized under Section 107(b)(4) of the Housing and Community Development Act of 1974, 42 U.S.C. 5307; Sections 233 and 242 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12773 and 12781–83; Section 423 of the Stuart B. McKinney Homeless Assistance Act, 42 U.S.C. 11383 *et seq.*; Title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992, 42 U.S.C. 12899 *et seq.*; and as provided for in annual HUD appropriations acts (*e.g.*, Consolidated

Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003).

**Section B. Amendment to Authority Excepted**

At Section B of 68 FR 54238 (September 16, 2003), under the heading entitled ''Authority Excepted,'' paragraph 2.b. is amended as follows:

b. The power to administer the section 107 programs listed in the Delegation of Authority to the Assistant Secretary for Policy Development and Research at 68 FR 42749 (July 18, 2003);

**Section C. Amendment to Authority to Redelegate**

At Section C of 68 FR 54238 (September 16, 2003), under the heading entitled ''Authority to Redelegate,'' is amended to read as follows:

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized to redelegate to employees of the Department any of the authority delegated under Section A, excluding the authority excepted under Section B, the authority to issue or waive rules and regulations.

**Section D. Amendment to Delegations Superseded**

At Section D of 68 FR 54238 (September 16, 2003), under the heading entitled ''Delegations Superseded,'' after paragraph 19, two new paragraphs are added to the list of delegations superseded as follows:

20. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development, published on January 26, 1998 (63 FR 3761);

21. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development, published on January 11, 1999 (64 FR 1637).

**Section E. Actions Ratified**

The Secretary hereby ratifies all actions previously taken by the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, with respect to the programs and matters listed in Section A.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 27, 2006.

**Alphonso Jackson,**

*Secretary.*

[FR Doc. E6–6246 Filed 4–25–06; 8:45 am]

BILLING CODE 4210–67–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4837–D–60]**

## Redelegations of Authority to Directors and Deputy Directors of Community Planning and Development in Field Offices

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of redelegation of authority to field offices.

**SUMMARY:** In this notice, the Assistant Secretary of Community Planning and Development redelegates to the Directors and Deputy Directors of Community Planning and Development in HUD Field Offices all powers and authorities necessary to carry out Office of Community Planning and Development programs, except those powers and authorities specifically excluded.

**EFFECTIVE DATES:** March 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Karen Daly, Director of Policy Development and Coordination, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7240, Washington, DC 20410–7000; (202) 708–1817. This is not a toll-free number. For those needing assistance, this number may be accessed via TTY by Calling the Federal Information Relay Service at 800 877–8339.

**SUPPLEMENTARY INFORMATION:** On April 15, 1994 (59 FR 18280), the Assistant Secretary for Community Planning and Development (CPD) previously redelegated to Directors and Deputy Directors of CPD in HUD Field Offices all powers and authorities necessary to carry out CPD programs, except those powers specifically excluded. A notice published on May 11, 1994 (59 FR 24451), corrected the effective date of the 1994 redelegations. A notice on published June 8, 1995 (60 FR 30312), further amended the 1994 redelegations.

On September 16, 2003 (68 FR 54238), the Secretary issued a Consolidated Delegation of Authority for CPD programs to the Assistant Secretary and the General Deputy Assistant Secretary for Community Planning and Development. This notice updates and revises redelegations of authority to Directors and Deputy Directors of CPD in HUD Field Offices. Accordingly, the Assistant Secretary redelegates as follows:

**Section A. General Redelegation of Authority**

1. Except as provided in Section C, the Assistant Secretary redelegates to the Directors and Deputy Directors of Community Planning and Development in HUD Field Offices all powers and authorities of the Assistant Secretary necessary to carry out the following Community Planning and Development programs and matters, except those authorities specifically excluded:

1. Community Development Block Grants, Loan Guarantees and other programs covered by Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*

*Authority not redelegated:*

- Terminate, reduce or limit the availability of grant payments pursuant to section 111(a), 42 U.S.C. 5311.
- Adjust entitlement and state grants pursuant to section 104(e), 42 U.S.C. 5304.
- Determine basic grant amounts for metropolitan cities, urban counties, and States pursuant to section 106, 42 U.S.C. 5306.
- Reallocate funds pursuant to section 106(c) or (d), 42 U.S.C. 5306.
- Determine the qualifications of localities for special consideration. This includes, but is not limited to, the determination of qualifications of counties as urban counties pursuant to section 102(a)(6), 42 U.S.C. 5302, the determination of what constitutes a city pursuant to section 102(a)(5), 42 U.S.C. 5302, and the determination of levels of physical and economic distress of cities and urban counties for eligibility for urban development action grants pursuant to section 119(b), 42 U.S.C. 5318.

Approve and disapprove applications, or amendments to applications, filed for loan guarantee or grant assistance, issue commitments or grant awards, execute grant agreements, or issue guarantees pursuant to section 108, 42 U.S.C. 5308.

2. Consolidated plans, 24 CFR part 91 (including Comprehensive Housing Affordability Strategies based on title I of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*) and submission and reporting requirements for the programs listed in paragraphs 1, 3, 4, and 6.

*Authority not redelegated:*

Effect remedies for noncompliance pursuant to section 108 of NAHA

3. Emergency Shelter Grants Program, title IV, subtitle B of the McKinney-Vento

Homeless Assistance Act, as amended, 42 U.S.C. 11371 *et seq.*

*Authority not redelegated:*

• Determine allocation amounts.

4. HOME Investment Partnerships, title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), as amended, 42 U.S.C. 12721 *et seq.*

*Authority not redelegated:*

• Determine allocation and reallocation amounts pursuant to section 217 of NAHA.

• Revoke a jurisdiction's designation as a participating jurisdiction pursuant to section 216 of NAHA.

• Effect remedies for noncompliance pursuant to section 223 of NAHA.

5. HOPE for Homeownership of Single Family Homes (HOPE 3), title IV, subtitle C of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12891.

6. Housing Opportunities for Persons With AIDS, the AIDS Housing Opportunity Act, title VII, subtitle D of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12901 *et seq.*

*Authority not redelegated:*

• Determine allocations, adjustments and reallocation amounts.

• Revoke a jurisdiction's designation as an eligible state or eligible metropolitan statistical area for a formula allocation or as an eligible applicant for a nonformula allocation.

• Effect remedies for noncompliance, such as termination, reduction or limitations on availability of grant payments, under 24 CFR 574.500(c).

7. Supportive Housing, Section 8 Moderate Rehabilitation Single Room Occupancy (SRO), and Shelter Plus Care Programs, title IV, subtitles C, D, E and F of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11301 *et seq.*

*Authority not redelegated:*

• Make funding decisions.

8. Economic Development Initiative grants, as specified in annual HUD appropriations acts, *e.g.*, Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 11 (Feb. 20, 2003).

9. Neighborhood Initiatives grants, as specified in annual HUD appropriations acts, *e.g.*, Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 11 (Feb. 20, 2003).

10. The Rural Housing and Economic Development program, as provided for originally in the Fiscal Year 1998 HUD/VA Appropriations Act, Pub. L. 105–65, 111 Stat. 1344 (Oct. 27, 1997), and subsequent annual HUD appropriations acts.

11. The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 *et seq.*, as amended, 42 U.S.C. 4601 *et seq.*

12. Youthbuild Program, title IV, subtitle D of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12899 *et seq.*

13. The Renewal Communities, urban Empowerment Zones and urban Enterprise Communities (RC/EZ/EC) Initiative as authorized under title 26, subtitle A, chapter 1, subchapter U of the Internal Revenue Code, as amended, 26 U.S.C. 1391 *et seq.* with respect to urban Empowerment Zones and urban Enterprise Communities and title 26, subtitle A, chapter 1, subchapter X of the Internal Revenue Code, as amended, 26 U.S.C. 1400E *et seq.* with respect to Renewal Communities; and grants for urban Empowerment Zones as provided for in annual HUD appropriations acts (*e.g.*, Consolidated Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003).

*Authority not redelegated:*

• Approve or amend strategic plans or other state and local commitments, including boundary changes.

• Revoke a designation, including issuing a warning letter pursuant to 24 CFR parts 597, 598, and 599.

14. District of Columbia Enterprise Zone, title 26, subtitle A, chapter 1, subchapter W of the Internal Revenue Code, 26 U.S.C. 1400 *et seq.*, as amended.

*Authority not redelegated:*

• Approve or amend strategic plans or other state and local commitments, including boundary changes.

15. Technical Assistance Awards as authorized under Section 107(b)(4) of the Housing and Community Development Act of 1974, 42 U.S.C. 5307; Sections 233 and 242 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12773 and 12781–83; Section 423 of the Stuart B. McKinney Homeless Assistance Act, 42 U.S.C. 11383 *et seq.*; Title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992, 42 U.S.C. 12899 *et seq.*; and as provided for in annual HUD appropriations acts, *e.g.*, Consolidated Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003.

**Section B. Limited Denial of Participation**

Subject to the excepted authority in Section C (4), the Assistant Secretary redelegates to Directors and Deputy Directors of CPD in HUD Field Offices the authority to order a limited denial of participation sanction pursuant to HUD regulations at 24 CFR 24, subpart J with respect to the programs and matters listed in Section A; provided that the General Counsel, or such other official as may be designated by the General Counsel, must: (1) Concur in any proposed sanction under part 24 before it is issued, and (2) concur in any proposed settlement of a sanction under part 24.

**Section C. General Authority Excepted**

The authority redelegated under Section A does not include:

(1) The authority to issue or waive regulations;

(2) The authority to sue and be sued;

(3) The authority to effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing; or

(4) Any authority not delegated to the Assistant Secretary for CPD under the Consolidated Delegation of Authority for Community Planning and Development (September 16, 2003, 68 FR 54238).

**Section D. Authority to Further Redelegate**

The authority redelegated in Sections A and B may not be further redelegated.

**Section E. Redelegations Superseded**

All previous redelegated authorities to Directors and Deputy Directors of Community Planning and Development in HUD Field Offices that are inconsistent with this Redelegation of Authority are hereby superseded, or superseded in part, including, but not limited to, the following:

(1) Redelegation of Authority from the Assistant Secretary for Community Planning and Development to the Field Offices, 59 FR 18280 (April 15, 1994), as amended by Paragraph 6, Delegation and Redelegation of Authority; Correction, 59 FR 24451 (May 11, 1994).

(2) Amendments to the Redelegation of Authority from the Assistant Secretary for Community Planning and Development to the Field Offices, 60 FR 30312 (June 8, 1995).

**Section F. Continuation in Effect of Other Redelegations**

Other redelegations of authority by the Assistant Secretary for Community Planning and Development, including his or her predecessors, with respect to any of the programs covered by this Redelegation of Authority which (1) are in effect as of the effective date of this document and (2) are consistent with this Redelegation of Authority are continued in effect unless and until

expressly modified or revoked by a delegation or redelegation of authority issued hereafter.

**Section G. Actions Ratified**

The Assistant Secretary hereby ratifies all actions previously taken by the Directors and Deputy Directors of CPD in HUD Field Offices, from September 9, 2003, through the effective date of this document by the Secretary, with respect to the programs and matters listed in Section A and orders of limited denial of participation issued in accordance with Section B.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: *March 27, 2006.*

**Pamela H. Patenaude,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. E6–6247 Filed 4–25–06; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision of a currently approved information collection (OMB Control Number 1010–0103).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 202—Royalties and part 206—Product Valuation. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The title of this ICR is ''30 CFR part 202—Royalties, subpart C—Federal and Indian Oil, and subpart J—Gas Production From Indian Leases; and part 206—Product Valuation, subpart B—Indian Oil, and subpart E—Indian Gas.'' The title reflects the previous consolidation of portions of six ICRs relating to Indian oil and gas leases. The six ICRs were previously titled:

- 1010–0061: 30 CFR part 206, subpart B—Indian Oil, § 206.55—Determination of Transportation Allowances (Form MMS–4110, Oil Transportation Allowance Report).
- 1010–0075: 30 CFR part 206, subpart E—Indian Gas, § 206.178—How do I determine a transportation allowance? (Form MMS–4295, Gas Transportation Allowance Report), and § 206.180—How do I determine an actual processing allowance? (Form MMS–4109, Gas Processing Allowance Summary Report).
- 1010–0095: 30 CFR part 206—Product Valuation, Subpart B—Indian Oil, § 206.54; subpart C—Federal Oil, § 206.109; subpart D—Federal Gas, §§ 206.156 and 206.158; and Subpart E—Indian Gas, § 206.177 (Form MMS–4393, Request to Exceed Regulatory Allowance Limitation).

**Note:** ICR 1010–0095 (discontinued May 25, 2005) referenced both Indian and Federal citations. Indian citations now are referenced in 1010–0103, and Federal citations are referenced in 1010–0136; each ICR uses Form MMS–4393. However, the form resides in ICR 1010–0136 where most of the burden hours are incurred.

- 1010–0103: 30 CFR part 206, subpart E—Indian Gas (Form MMS–4411, Safety Net Report).
- 1010–0104: 30 CFR part 206, subpart E—Indian Gas, §§ 206.172, 206.173, and 206.176 (Form MMS–4410, Accounting for Comparison [Dual Accounting]).
- 1010–0138: 30 CFR part 206, subpart B, Establishing Oil Value on Royalty Due on Indian Leases.

**DATES:** Submit written comments on or before May 26, 2006.

**ADDRESSES:** Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0103).

Please also send a copy of your comments to MMS via e-mail at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

You may also mail a copy of your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225.

If you use an overnight courier service or wish to hand-deliver your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain, at no cost, copies of (1) the ICR, (2) any associated forms, and (3) regulations that require the subject collection of information sent to OMB.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR part 202—Royalties, subpart C—Federal and Indian Oil, and subpart J—Gas Production From Indian Leases; and part 206—Product Valuation, subpart B—Indian Oil, and subpart E—Indian Gas.

*OMB Control Number:* 1010–0103.

*Bureau Form Number:* Forms MMS–4109, MMS–4110, MMS–4295, MMS–4410, and MMS–4411. Form MMS–4393 is used with this ICR (Indian oil and gas) and also with ICR 1010–0136 (Federal oil and gas) where the form resides.

*Abstract:* The Secretary of the U.S. Department of the Interior under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS) including managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

**Applicable Citations**

Applicable citations of the laws pertaining to mineral leases on Indian lands include 25 U.S.C. 396d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands); 25 U.S.C. 2103 (Indian Mineral Development Act of 1982); and Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]). The CFR citations we are covering in this ICR are 30 CFR part 202, subpart J, and part 206, subparts B and E. Public laws pertaining to mineral royalties are located on our website at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

**Background**

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from

Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information MMS collects includes data necessary to ensure that royalties are accurately valued and appropriately paid or distributed.

Regulations at 30 CFR part 202, subparts C and J, and part 206, subparts B and E, govern the valuation of oil and gas produced from leases on Indian lands. Indian tribes and individual Indian mineral owners receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian tribes and individual Indian mineral owners receive payment on the full value of the minerals removed from their lands. Tribal representatives have expressed their concern that the Secretary continue to fulfill all trust and fiduciary duties and ensure that the correct royalty is received from Indian lands. Failure to collect the data described in this information collection could result in the undervaluation of leased minerals on Indian lands.

The data collected and associated forms are necessary to perform the MMS regulatory functions and are discussed in detail below. All data reported is subject to subsequent audit and adjustment.

**Indian Oil**

Regulations at 30 CFR part 206, subpart B, which govern the valuation for royalty purposes of oil produced from Indian oil and gas leases (tribal and allotted), must be consistent with mineral leasing laws, other applicable laws, and lease terms. Regulations at § 206.52 explain how lessees must determine the value of oil produced from Indian oil and gas leases. Generally, the regulations provide that lessees determine the value of oil based on: (1) The gross proceeds under an arm's-length contract, (2) a series of benchmarks under a non-arm's-length contract, or (3) major portion analysis. These oil valuation methods are eligible for applicable transportation allowances.

*Form MMS–4110, Oil Transportation Allowance Report*

Under certain circumstances, the regulations authorize lessees to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a sales point not in the immediate lease area. The regulations establish a limit on transportation allowances for oil at 50 percent of the value of the oil at the point of sale. From information collected on Form MMS–4110: (1) MMS verifies transportation allowances during the product valuation verification to determine if the lessee reported and paid the proper royalty amount; and (2) MMS and tribal personnel evaluate whether the transportation allowances reported and claimed by lessees are within regulatory allowance limitations. Form MMS–4110 is used for both arm's-length and non-arm's-length contracts.

To receive an oil transportation allowance, lessees must submit Form MMS–4110 before or in the same month that they report the transportation allowance on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140, expiration date October 31, 2006). After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period. Completed Form MMS–4110 and supporting schedules summarize actual operating, maintenance, and overhead costs, as well as depreciation and undepreciated capital investment costs.

**Indian Gas**

Regulations at 30 CFR part 206, subpart E, govern the valuation for royalty purposes of natural gas produced from Indian oil and gas leases. The regulations apply to all gas production from Indian oil and gas leases (tribal and allotted), except leases on the Osage Indian Reservation.

*Form MMS–4411, Safety Net Report*

The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids MMS compliance efforts.

The regulations require lessees to submit Form MMS–4411 when gas production from an Indian oil or gas lease is sold beyond the first index pricing point. The lessee submits safety net prices, for the previous calendar year, to MMS annually (by June 30) using this form.

*Form MMS–4410, Accounting for Comparison [Dual Accounting]*

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Lessees must elect to perform actual dual accounting as defined in 30 CFR 206.176 or alternative dual accounting as defined in 30 CFR 206.173.

According to 30 CFR 206.176, dual accounting is defined as the greater of the following two values:

(1) The value of gas prior to processing, less any applicable allowances, or

(2) The combined value of residue gas and gas plant products resulting from processing the gas, less any applicable allowances, plus any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement, without resorting to processing, less applicable allowances.

Lessees use Form MMS–4410 to certify that dual accounting is not required on an Indian lease or to make an election for actual or alternative dual accounting for Indian leases.

Form MMS–4410 (Part A), Certification for Not Performing Dual Accounting, requires lessees to identify the MMS-designated areas where the leases are located and provide specific justification for not performing dual accounting. Part A is a one-time notification, until any changes occur in gas disposition. Part A lists the following acceptable reasons for not performing dual accounting: (1) The lease terms do not require dual accounting; (2) none of the gas from the lease is ever processed; (3) gas has a Btu content of 1,000 Btu's per cubic foot or less at the lease's facility measurement point(s); (4) none of the gas from the lease is processed until after gas flows into a pipeline with an index located in an index zone; and (5) none of the gas from the lease is processed until after gas flows into a mainline pipeline not located in an index zone.

Form MMS–4410 (Part B), Election to Perform Actual Dual Accounting or Alternative Dual Accounting, allows MMS to collect the lessee's elections to perform actual dual accounting or alternative dual accounting. A lessee makes an election by checking either the actual or alternative dual accounting box for each MMS-designated area where its leases are located. Part B also includes the lessee's lease prefixes

within each MMS-designated area to assist lessees in making the appropriate election. The election to perform actual or alternative dual accounting applies to all of a lessee's Indian leases in each MMS-designated area. The first election to use the alternative dual accounting is effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative dual accounting methodology must remain in effect for 2 calendar years. However, lessees may return to the actual dual accounting methodology only at the beginning of the next election period or with written approval from MMS and the tribal lessors for tribal leases, and from MMS for Indian allotted leases in the MMS-designated area (30 CFR 206.173(a)).

*Form MMS–4295, Gas Transportation Allowance Report*

Under certain circumstances, the regulations authorize lessees to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a processing or sales point not in the immediate lease area. The regulations establish a limit on transportation allowance deductions for gas at 50 percent of the value of the gas at the point of sale. The MMS and tribal personnel use the information collected on Form MMS–4295 to evaluate whether the non-arm's-length or no contract transportation allowances reported and claimed by lessees are reasonable, actual costs and are within regulatory allowance limitations. To take a non-arm's-length or no contract transportation deduction, a lessee must submit Form MMS–4295 within 3 months after the end of the 12-month period to which the allowance applies.

*Form MMS–4109, Gas Processing Allowance Summary Report*

When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. The regulations establish a limit of 66⅔ percent of the value of each gas plant product as an allowable gas processing deduction. The MMS normally accepts the cost as stated in the lessee's arm's-length processing contract as being representative of the cost of the processing allowance. In those instances where gas is being processed through a lessee-owned plant, the lessee must base processing costs on the actual plant operating and maintenance expenses, depreciation, and a reasonable return on investment. The allowance is expressed as a cost per unit of individual gas plant products. Lessees may take processing allowances as a deduction from royalty payments.

The MMS and tribal personnel use the information collected on Form MMS–4109 to evaluate whether the non-arm's-length or no contract processing allowances reported and claimed by lessees are reasonable, actual costs and are within regulatory allowance limitations. To take a non-arm's-length or no contract processing deduction, lessees must submit Form MMS–4109 within 3 months after the end of the 12-month period to which the allowance applies.

**Indian Oil and Gas**

*Form MMS–4393, Request to Exceed Regulatory Allowance Limitation*

Form MMS–4393 is used for both Federal and Indian leases. Most of the burden hours are incurred on Federal leases; therefore, the form and all the burden hours are approved under ICR 1010–0136. However, we included a discussion of the form in this ICR as well.

Upon proper application from the lessee, MMS may approve an oil or gas transportation allowance in excess of 50 percent (Federal or Indian) or a gas processing allowance in excess of 66⅔ percent (Federal only). To request permission to exceed a regulatory allowance limit, lessees must submit a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation, including a completed Form MMS–4393. This form provides MMS with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports.

**Summary**

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to Indian tribes and individual Indian mineral owners.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

In some cases the requirement to respond is mandatory, such as reporting royalty values or declaring the type of dual accounting election the lessee chooses to perform. In other cases, it is voluntary, such as asking permission to exceed a transportation allowance limit. For example, a lessee can request, but is not required to apply for, a transportation allowance deduction in excess of the regulatory limits. However, if no request is made, the transportation limitation is set by regulation.

*Frequency of Response:* Annually and on occasion.

*Estimated Number and Description of Respondents:* 123 Indian lessees.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 1,276 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| **202—ROYALTIES Subpart C—Federal and Indian Oil** | | | | |
| 202.101 | Standards for reporting and paying royalties<br>Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | **Subpart J—Gas Production From Indian Leases** | | | |
| 202.551 (b) | How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?.<br>(b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |
| 202.551 (c) | How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?.<br>(c) You and all other persons paying royalties on the lease may ask MMS for permission * * *. | 1 | 1 | 1 |
| 202.558 (a) and (b) | What standards do I use to report and pay royalties on gas?<br>(a) You must report gas volumes as follows: * * *<br>(b) You must report residue gas and gas plant product volumes as follows: * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |
| | **206—PRODUCT VALUATION**<br>**Subpart B—Indian Oil** | | | |
| 206.52 (b)(1)(i) and (iii), (b)(2), and (d). | Valuation standards<br>(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length * * *.<br>(iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value * * *.<br>(b)(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the oil.<br>(d) Any Indian lessee will make available, upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas. | PRODUCE RECORDS—The Office of Regulatory Affairs (ORA) determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |
| 206.52 (e)(1) | Valuation standards<br>(e)(1) Where the value is determined under paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). | | |
| 206.52 (e)(2) | Valuation standards<br>(e)(2) A lessee shall notify MMS if it has determined value under paragraph (c)(4) or (c)(5) of this section * * * The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed * * *. | 20 | 1 | 20 |
| 206.52 (g) | Valuation standards<br>(g) The lessee may request a value determination from MMS * * * The lessee shall submit all available data relevant to its proposal * * *. | 40 | 1 | 40 |
| 206.54 (b)(2) | Transportation allowances—general<br>(b)(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination * * *. | Burden covered under OMB Control Number 1010–0136 (expires 05/31/2006). | | |
| 206.55 (a)(1)(i) | Determination of transportation allowances<br>(a) Arm's-length transportation contracts.<br>(1)(i) * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report * * *. | Burden covered under § 206.55(c)(1)(i) and (iii). | | |
| 206.55 (a)(2)(i) | Determination of transportation allowances<br>(a) Arm's-length transportation contracts.<br>(2)(i) * * * Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without MMS approval. | Burden covered under § 206.55(a)(3). | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 206.55 (a)(2)(ii) | Determination of transportation allowances<br>(a) Arm's-length transportation contracts.<br>(2)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported * * *. | 20 | 1 | 20 |
| 206.55 (a)(3) | Determination of transportation allowances<br>(a) Arm's-length transportation contracts.<br>(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal * * *. | 40 | 1 | 40 |
| 206.55 (b)(1) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(1) * * * A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee * * *. | Burden covered under § 206.55(c)(2)(i), and (c)(2)(iii). | | |
| 206.55 (b)(1) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(1) * * * When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |
| 206.55 (b)(2)(iv) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(2)(iv) * * * After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS. | 20 | 1 | 20 |
| 206.55 (b)(2)(iv)(A) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(2)(iv)(A) * * * After an election is made, the lessee may not change methods without MMS approval * * *. | 20 | 1 | 20 |
| 206.55 (b)(3)(i) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval. | 40 | 1 | 40 |
| 206.55 (b)(3)(ii) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(3)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported * * *. | 20 | 1 | 20 |
| 206.55 (b)(4) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal. * * *. | 20 | 1 | 20 |
| 206.55 (b)(5) | Determination of transportation allowances<br>(b) Non-arm's-length or no contract.<br>(5) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section * * *. | 20 | 1 | 20 |
| 206.55 (c)(1)(i) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(1) Arm's-length contracts.<br>(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance * * *. | 4 | 3 | 12 |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 206.55 (c)(1)(iii) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(1) Arm's-length contracts.<br>(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). | 4 | 3 | 12 |
| 206.55 (c)(1)(iv) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(1) Arm's-length contracts.<br>(iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS. | PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |
| 206.55 (c)(2)(i) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(2) Non-arm's-length or no contract.<br>(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * * The initial report may be based upon estimated costs. | 6 | 3 | 18 |
| 206.55 (c)(2)(iii) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(2) Non-arm's-length or no contract.<br>(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). | 6 | 3 | 18 |
| 206.55 (c)(2)(iv) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(2) Non-arm's-length or no contract.<br>(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period * * *. | Burden covered under § 206.55(c)(2)(i). | | |
| 206.55 (c)(2)(v) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(2) Non-arm's-length or no contract.<br>(v) * * * only those allowances that have been approved by MMS in writing * * *. | Burden covered under § 206.55(c)(2)(i). | | |
| 206.55(c)(2)(vi) | Determination of transportation allowances<br>(c) Reporting requirements.<br>(2) Non-arm's-length or no contract.<br>(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS. | PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |
| 206.55 (c)(4) and (e)(2). | Determination of transportation allowances<br>(c) Reporting requirements.<br>(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, * * *.<br>(e) Adjustments.<br>(2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | **206—PRODUCT VALUATION**<br>**Subpart E—Indian Gas** | | | |
| 206.172(b)(1)(ii) | How do I value gas produced from leases in an index zone?<br>(b) Valuing residue gas and gas before processing.<br>(1)(ii) Gas production that you certify on Form MMS–4410, * * * is not processed before it flows into a pipeline with an index but which may be processed later * * *. | 4 | 25 | 100 |
| 206.172(e)(6)(i) and (iii). | How do I value gas produced from leases in an index zone?<br>(e) Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.<br>(6)(i) You must report the safety net price for each index zone to MMS on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year; * * *.<br>(iii) MMS may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later. * * *. | 3 | 20 | 60 |
| 206.172(e)(6)(ii) | How do I value gas produced from leases in an index zone?<br>(e) Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.<br>(6)(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |
| 206.172(f)(1)(ii), (f)(2), and (f)(3). | How do I value gas produced from leases in an index zone?<br>(f) Excluding some or all tribal leases from valuation under this section.<br>(1) An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section * * *.<br>(ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation.<br>(2) An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section * * *.<br>(3) The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution * * *. | 40 | 1 | 40 |
| 206.173(a)(1) | How do I calculate the alternative methodology for dual accounting?<br>(a) Electing a dual accounting method.<br>(1) * * * You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting). | 2 | 35 | 70 |
| 206.173(a)(2) | How do I calculate the alternative methodology for dual accounting?<br>(a) Electing a dual accounting method.<br>(2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. * * *. | Burden covered under § 206.173(a)(1). | | |
| 206.174(a)(4)(ii) | How do I value gas production when an index-based method cannot be used?<br>(a) Situations in which an index-based method cannot be used.<br>(4)(ii) If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS by the due date specified in the written notice from MMS of the major portion value * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 206.174 (b)(1)(i) and (iii); (b)(2); (d)(2). | How do I value gas production when an index-based method cannot be used?<br>(b) Arm's-length contracts.<br>(1)(i) You have the burden of demonstrating that your contract is arm's-length.* * *<br>(iii) * * * In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your value. * * *.<br>(b)(2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product.<br>(d) Supporting data.<br>(2) You must make all such data available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons.* * *. | PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |
| 206.174 (d) | How do I value gas production when an index-based method cannot be used?<br>(d) Supporting data. If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to determination of royalty value. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). | | |
| 206.174 (f) | How do I value gas production when an index-based method cannot be used?<br>(f) Value guidance. You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. * * *. | 40 | 1 | 40 |
| 206.175(d)(4) | How do I determine quantities and qualities of production for computing royalties?.<br>(d)(4) You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. * * *. | 20 | 1 | 20 |
| 206.176(b) | How do I perform accounting for comparison?<br>(b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section. | Burden covered under § 206.173(a)(1). | | |
| 206.176(c) | How do I perform accounting for comparison?<br>(c) * * * If you do not perform dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed. | Burden covered under § 206.172(b)(1)(ii). | | |
| **TRANSPORTATION ALLOWANCES** | | | | |
| 206.177(c)(2) and (c)(3). | What general requirements regarding transportation allowances apply to me?<br>(c)(2) If you ask MMS, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. * * *.<br>(3) Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. | Burden covered under OMB Control Number 1010–0136 (expires 05/31/2006) | | |
| 206.178 (a)(1)(i) | How do I determine a transportation allowance?<br>(a) Determining a transportation allowance under an arm's-length contract.<br>(1)(i) * * * You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on Form MMS–2014. | 1 | 50 | 50 |
| 206.178(a)(1)(iii) | How do I determine a transportation allowance?<br>(a) Determining a transportation allowance under an arm's-length contract.<br>(1)(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties * * * In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs. | PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 206.178(a)(2)(i) and (ii) | How do I determine a transportation allowance? .....<br>(a) Determining a transportation allowance under an arm's-length contract.<br>(2)(i) of this section * * * you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without MMS approval, or without lessor approval on tribal leases.<br>(ii) As an alternative to paragraph (a)(2)(i), you may propose to MMS a cost allocation method based on the values of the products transported. * * *. | 20 | 1 | 20 |
| 206.178(a)(3)(i) and (ii) | How do I determine a transportation allowance? .....<br>(a) Determining a transportation allowance under an arm's-length contract.<br>(3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. * * *.<br>(ii) You are required to submit all relevant data to support your allocation proposal. * * *. | 40 | 1 | 40 |
| 206.178(b)(1)(ii) ..... | How do I determine a transportation allowance? .....<br>(b) Determining a transportation allowance under a non-arm's-length contract or no contract.<br>(1)(ii) * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. * * *. | 15 | 7 | 105 |
| 206.178(b)(2)(iv) ..... | How do I determine a transportation allowance? .....<br>(b) Determining a transportation allowance under a non-arm's-length contract or no contract.<br>(2)(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without MMS approval. | 20 | 1 | 20 |
| 206.178(b)(2)(iv)(A) .... | How do I determine a transportation allowance? .....<br>(b) Determining a transportation allowance under a non-arm's-length contract or no contract.<br>(2)(iv)(A) * * * Once you make an election, you may not change methods without MMS approval * * *. | 20 | 1 | 20 |
| 206.178(b)(3)(i) ..... | How do I determine a transportation allowance? .....<br>(b) Determining a transportation allowance under a non-arm's-length contract or no contract.<br>(3)(i) * * *. Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval. | 40 | 1 | 40 |
| 206.178(b)(3)(ii) ..... | How do I determine a transportation allowance? .....<br>(b) Determining a transportation allowance under a non-arm's-length contract or no contract.<br>(3)(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported * * *. | 20 | 1 | 20 |
| 206.178(b)(5) ..... | How do I determine a transportation allowance? .....<br>(b) Determining a transportation allowance under a non-arm's-length contract or no contract.<br>(5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS * * *. You are required to submit all relevant data to support your proposal * * *. | 40 | 1 | 40 |
| 206.178(d)(1) ..... | How do I determine a transportation allowance? .....<br>(d) Reporting your transportation allowance.<br>(1) If MMS requests, you must submit all data used to determine your transportation allowance * * *. | PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 206.178 (d)(2), (e), and (f)(1). | How do I determine a transportation allowance? .....<br>(d) Reporting your transportation allowance.<br>(2) You must report transportation allowances as a separate line item on Form MMS–2014 * * *.<br>(e) Adjusting incorrect allowances. If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due * * *.<br>(f) Determining allowable costs for transportation allowances * * *.<br>(1) Firm demand charges paid to pipelines * * *. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |
| | **PROCESSING ALLOWANCES** | | | |
| 206.180(a)(1)(i) ..... | How do I determine an actual processing allowance? .....<br>(a) Determining a processing allowance if you have an arm's-length processing contract.<br>(1)(i) * * * You have the burden of demonstrating that your contract is arm's-length. You are required to submit to MMS a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report that deducts the allowance on the Form MMS–2014. | 1 | 30 | 30 |
| 206.180(a)(1)(iii) ..... | How do I determine an actual processing allowance? .....<br>(a) Determining a processing allowance if you have an arm's-length processing contract.<br>(1)(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties * * *. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your processing costs. | PRODUCE RECORDS— The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |
| 206.180(a)(3) ..... | How do I determine an actual processing allowance? .....<br>(a) Determining a processing allowance if you have an arm's-length processing contract.<br>(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS * * *. You are required to submit all relevant data to support your proposal * * *. | 40 | 1 | 40 |
| 206.180(b)(1)(ii) ..... | How do I determine an actual processing allowance? .....<br>(b) Determining a processing allowance if you have a non-arm's-length contract or no contract.<br>(1)(ii) * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies * * *. | 20 | 5 | 100 |
| 206.180(b)(2)(iv) ..... | How do I determine an actual processing allowance? .....<br>(b) Determining a processing allowance if you have a non-arm's-length contract or no contract.<br>(2)(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment * * *. you may not later elect to change to the other alternative without MMS approval. | 20 | 1 | 20 |
| 206.180(b)(2)(iv)(A) .... | How do I determine an actual processing allowance? .....<br>(b) Determining a processing allowance if you have a non-arm's-length contract or no contract.<br>(2)(iv)(A) * * * Once you make an election, you may not change methods without MMS approval * * *. | 20 | 1 | 20 |
| 206.180(b)(3) ..... | How do I determine an actual processing allowance? .....<br>(b) Determining a processing allowance if you have a non-arm's-length contract or no contract.<br>(3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative. | 20 | 1 | 20 |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 206.180(c)(1) | How do I determine an actual processing allowance?<br>(c) Reporting your processing allowance.<br>(1) If MMS requests, you must submit all data used to determine your processing allowance * * *. | PRODUCE RECORDS—The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions. | | |
| 206.180(c)(2) and (d) | How do I determine an actual processing allowance?<br>(c) Reporting your processing allowance<br>(2) You must report gas processing allowances as a separate line item on the Form MMS–2014. * * *.<br>(d) Adjusting incorrect processing allowances. If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due * * *. | Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52. | | |
| 206.181(c) | How do I establish processing costs for dual accounting purposes when I do not process the gas?<br>(c) A proposed comparable processing fee submitted to either the tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290. | 40 | 1 | 40 |
| Total Burden | | | 210 | 1,276 |

*Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden:* We have identified no ''non-hour'' cost burdens.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on June 14, 2005 (70 FR 34494), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 26, 2006.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: February 15, 2006.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. E6–6208 Filed 4–25–06; 8:45 am]

BILLING CODE 4310–MR–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 April 8, 2006. Pursuant to § 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 May 11, 2006.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**KANSAS**

**Atchison County**

Bolman, George T. and Minnie Searles, House, 418 N. 4th St., Atchison, 06000385

Braun, Henry, House, 1307 Division St., Atchison, 06000387

Edmiston, James M., House, 311 S. 7th St., Atchison, 06000386

Horan, Michael J. and Mattie, House, 822 N. 4th St., Atchison, 06000384

Waggener, Balie P., House, 415 W. Riley St., Atchison, 06000388

**Johnson County**

Loomis Historic District, 8325 Johnson Dr., 5900 Hadley, 5923 Hadley, Merriam, 06000390

**Sedgwick County**

Ellis—Singleton Building, 221 S. Broadway, Wichita, 06000389

**Stafford County**

Farmers National Bank, 100 N. Main, Stafford, 06000392

Larabee, Nora E., Memorial Library, 108 N. Union St., Stafford, 06000391

**Trego County**

Wilcox School—District 29, (Public Schools of Kansas MPS) Rural Route —15 mi. S. of WaKeeney on KS 283, Ransom, 06000393

**MAINE**

**Cumberland County**

Everett Chambers, 47–55 Oak St., Portland, 06000397

**Kennebec County**

Grant, William F., House, 869 Main St., North Vassalboro, 06000396

Moody Mansion, ME 194, across from the jct. with Hanley Rd., Pittston, 6000394

**Washington County**

Devils Head Site, Address Restricted, Calais, 06000395

**MASSACHUSETTS**

**Middlesex County**

West School, 106 Bedford St., Burlington, 06000398

**Worcester County**

Aldrich, Nathan C., House and Resthaven Chapel, 111 Providence St., Mendon, 06000399

Indian Cemetery, Old, 50 Cottage St., West Brookfield, 06000400

West Brookfield Center Historic District (Boundary Increase), Central, Milk, Mechanic, Sherman, Front and Ware Sts., Long Hill, Old Long Hill Rd., Railroad, Freight House Aves., West Brookfield, 06000401

**MICHIGAN**

**Bay County**

Elm Lawn Cemetery, 300 Ridge Rd., Bay City, 06000404

**Oakland County**

Hilzinger Block, 106–110 S. Main St., Royal Oak, 06000403

**Washtenaw County**

Goss, Arnold and Gertrude, House, 3215 W. Dobson Place, Ann Arbor, 06000402

**Wayne County**

Annapolis Park Historic District, Julius, Matthew, Hanover, Farnum, Alan, and Paul, Westland, 06000405

**OREGON**

**Multnomah County**

Mallory Hotel, 729 SW. 15th Ave., Portland, 06000406

**VIRGINIA**

**Albemarle County**

Estes Farm, 6185 Estes Ln., Dyke, 06000409

**Halifax County**

Cove, The, 5059 Cove Rd., Harrisburg, 06000407

**Loudoun County**

Myrtle Hall Farm, 19305 Ridgeside Rd., Bluemont, 06000408

A request for a MOVE has been made for the following resource:

**MINNESOTA**

**Sherburne County**

Fox, Herbert M., House U.S. 10 NW. of Becker Becker vicinity, 80002175

[FR Doc. E6–6209 Filed 4–25–06; 8:45 am]

BILLING CODE 4312–51–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 April 15, 2006.

Pursuant to § 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 May 11, 2006.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**ARKANSAS**

**Carroll County**

Carroll County Poor Farm Cemetery, Address Restricted, Pleasant Valley, 06000412

**Clark County**

Maumelle Ordnance Works Bunker #4, 4 Willastein Dr., Maumelle, 06000417

**Cross County**

South Elementary School, 711 E. Union Ave., Wynne, 06000419

**Jefferson County**

McDonald's Store #433 Sign, 1300 S. Main St., Pine Bluff, 06000411

St. Louis San Francisco (Frisco) Railway Coach #661, 2815 Dixie Woods Dr., Pine Bluff, 06000413

**Logan County**

Arkansas Tuberculosis Sanatorium Historic District, East end of AR 116 S, Booneville, 06000414

**Madison County**

St. Paul School Building, (Public Schools in the Ozarks MPS) 200 W 4th St., St. Paul, 06000416

**Mississippi County**

Blytheville Commercial Historic District, Main St. bet. 5th and Franklin Sts., Ash St. bet. 5th and 2nd Sts., Blytheville, 06000421

Garden Point Cemetery, 4682 West AR 140, Etowah, 06000415

**Pope County**

First Christian Church, 103 S. Boston Ave., Russellville, 06000418

**Pulaski County**

Clayborn, John Henry, House, 1800 Marshall, Little Rock, 06000420

**Van Buren County**

Clinton Commercial Historic District, Roughly bounded by Town Branch Creek and by AR 65B, Clinton, 06000410

**HAWAII**

**Honolulu County**

Holt, Lemon Wond, House, 3704 Anuhea St., Honolulu, 06000422

**IOWA**

**Muscatine County**

Downtown Commercial Historic District, (Muscatine, Iowa MPS) Roughly nine blks centered on 2nd St. bet. Pine and Mulberry, Muscatine, 06000423

**MINNESOTA**

**Pope County**

Little Falls and Dakota Depot, Depot Ln., Starbuck, 06000424

**MONTANA**

**Lewis and Clark County**

Home of Peace, Alexander St. bet. Brady St. and Custer Ave., Helena, 06000425

**Madison County**

Thexton Ranch, 335 Vaney Rd., Ennis, 06000426

**NORTH CAROLINA**

**Forsyth County**

Wachovia Building (Boundary Increase), 301 N. Main St., Winston-Salem, 06000433

**PENNSYLVANIA**

**Berks County**

Willson, Thomas A. and Co., 201 Washington St., Reading, 06000428

**Lancaster County**

Ephrata Commercial Historic District, portions of West Main, East Main, North State, South State Sts., and Washington Ave., Ephrata, 06000427

Speedwell Forge Mansion, 465 Speedwell Forge Rd., Elizabeth Township, 06000429

**Philadelphia County**

Germantown Grammar School (Boundary Increase), (Philadelphia Public Schools TR) 45 W. Haines St., Philadelphia, 06000430

**Wyoming County**

Noxen School, School St., Noxen Township, 06000431

**UTAH**

**Weber County**

US Forest Service Building, (Ogden Art Deco Building TR) 507 25th St., Ogden, 06000432

A request for REMOVAL has been made for the following resource:

**ARKANSAS**

**Pulaski County**

Wolf Bayou Bridge, (Historic Bridges of Arkansas MPS) Pulaski County Road 85, Scott vicinity, 04000502

[FR Doc. E6–6211 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were collected from North Dakota.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1909, human remains representing a minimum of one individual were collected from North Dakota, by Rev. Gilbert L. Wilson during an American Museum of Natural History expedition. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on the catalog description, which states that the remains are ''Mandan-Hidatsa.''

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before May 26, 2006. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: April 3, 2006.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E6–6262 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Western Archeological and Conservation Center, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, National Park Service, Western Archeological and Conservation Center, Tucson, AZ. The human remains and cultural items were removed from various sites in Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the Chief, Museum Collections Repository, Western Archeological and Conservation Center.

A detailed assessment of the human remains and associated funerary objects was made by Western Archeological and Conservation Center professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. Members of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona were contacted, but did not attend the consultation meeting and were represented by members of the Gila River Indian Community of the Gila River Indian Reservation, Arizona.

In 1956, human remains representing a minimum of one individual were donated to the National Park Service by Dr. Cyril M. Cron. The cremated remains were found near Bylas in Graham County, AZ. No known individuals were identified. The two associated funerary objects are one Gila Red bowl and one Gila Red jar. The jar and bowl date the cremation to the Classic period of the Hohokam or Salado cultural tradition (A.D. 1200–1450).

In 1956, human remains representing a minimum of two individuals were donated to the National Park Service by Dr. Cyril M. Cron. The cremated

remains were found near Phoenix in Maricopa County, AZ. No known individuals were identified. The two associated funerary objects are one Gila Red bowl and one Gila Red jar. The jar and bowl date the cremation to the Classic period of the Hohokam or Salado cultural tradition (A.D. 1200–1450).

In 1956, human remains and associated funerary objects from Tonto National Monument's Upper Ruin site in Gila County, AZ, were donated to the National Park Service by Cyril M. Cron. The human remains and associated funerary objects appear in Tonto National Monument's Notice of Inventory Completion published in the **Federal Register** on Wednesday, February 22, 2006 (FR Doc. E6–2477, pages 9152–9154).

In 1956, human remains representing a minimum of two individuals were removed from two separate sites in Gila County, AZ, during a legally authorized survey under the direction of National Park Service archeologist Raymond S. Brandes. The locations or descriptions of the sites were not included in the survey report. No known individuals were identified. No associated funerary objects are present. Based on diagnostic artifacts found at the sites the human remains are attributed to the Classic Period, Salado cultural tradition (A.D. 1200–1450).

In 1958, human remains representing a minimum of seven individuals were removed from the Gila Pueblo site in Gila County, AZ, during legally authorized excavations under the direction of National Park Service archeologist Joel Shiner. The Gila Pueblo site was acquired by the National Park Service in 1952 and remained under National Park Service control until 1972 when it was transferred to Eastern Arizona College. No known individuals were identified. The two associated funerary objects are one Classic Period Salado miniature bowl and one copper bell. Based on the funerary objects as well as artifacts found elsewhere on the site, the human remains are attributed to the Gila phase of the Classic Period, Salado cultural tradition (A.D. 1300–1450).

In 1968, human remains representing two individuals were removed from the Togetzoge site in Pinal County, AZ. No known individuals were identified. No associated funerary objects are present. Based on diagnostic artifacts from the site the human remains are attributed to the Classic Period, Salado cultural tradition (A.D. 1200–1450). The Togetzoge site is located on private property. Records do not indicate how the human remains came into the possession of the National Park Service.

In 1970, human remains representing a minimum of two individuals were removed from the Hagen site in Gila County, AZ, during legally authorized excavations under the direction of National Park Service archeologist Jon N. Young. No known individuals were identified. No associated funerary objects are present. Based on diagnostic artifacts recovered from the site the human remains are attributed to the Gila phase of the Classic Period, Salado cultural tradition (A.D. 1300–1450).

In 1990, cremated human remains representing a minimum of one individual were discovered in the collections storage area. No documentation has been located regarding the location or description of the site from which the human remains were removed. No known individuals were identified. The 159 associated funerary objects are 148 beads and 1 bag of beads, 9 bone rings, and 1 bird claw. Similarities between the human remains and associated funerary objects and other items in the collection indicate that, more likely than not, they were removed from a site in central Arizona and are related to the Hohokam or Salado cultural tradition.

The Hohokam were a sedentary agricultural people developing out of the local Archaic population. Hohokam settlement pattern was predominantly of the rancheria type, with pithouse or house-in-pit architecture. Ballcourts are often found at Hohokam sites. Pit or urn cremations were the predominant burial practice prior to A.D. 1100. Extended supine inhumations then became more prevalent, completely replacing cremations by A.D. 1300. There was a pronounced, though far from complete, decline in population after about A.D. 1350.

The ''Salado cultural tradition'' or ''Salado phenomenon,'' as defined by recent archeological research, is a term that has invoked archeological debate since the 1930s. For purposes of this notice, a primary geographic area of the Salado is located between the desert-dwelling Hohokam in southern Arizona and puebloan groups of the mountain areas to the north and east. However, evidence of Salado ceramic traditions have been discovered throughout the Southwest and as far south as Mexico. Salado sites often contain a variety of architectural styles and material culture that represent both the Hohokam and ancestral Puebloan traditions. For example, both architectural styles have been found within single sites in the Tonto Basin, suggesting close mixing between the two groups. Recent research suggests that the intermixing of these two groups may have occurred in the late 13th century to the middle part of the 15th century.

Overall, the archeological evidence, including material culture, architectural styles, and burial practices, indicates affiliation with a number of contemporary indigenous groups including the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. In addition to the archeological evidence, oral traditions of these six tribes support ancestral ties to these cultural traditions.

In 1990, representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona issued a joint policy statement claiming ancestral ties to the Hohokam and Salado cultural traditions. In 1994, representatives of the Hopi Tribe of Arizona issued a statement claiming cultural affiliation with Hohokam and Salado cultural traditions. In 1995, representatives of the Zuni Tribe of the Zuni Reservation, New Mexico issued a statement claiming cultural affiliation with the Hohokam and Salado cultural traditions.

Officials of the Western Archeological and Conservation Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 17 individuals of Native American ancestry. Officials of the Western Archeological and Conservation Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 165 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Western Archeological and Conservation Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian

Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Stephanie H. Rodeffer, Chief, Museum Collections Repository, Western Archeological and Conservation Center, 255 N. Commerce Park Loop, Tucson, AZ 85745, telephone (520) 670–6501, before May 26, 2006. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Western Archeological and Conservation Center is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: March 14, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–6261 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: South Dakota State Historical Society, Archaeological Research Center, Rapid City, SD

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the South Dakota State Historical Society, Archaeological Research Center, Rapid City, SD. The human remains and associated funerary objects were removed from eastern, central, and northwestern South Dakota, and southeastern Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (3) (d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Archaeological Research Center professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

In 1980, human remains representing a minimum of one individual were removed from a pothunter's back dirt on a mound, 39BE46/80–70, in Beadle County, SD, during the James River Survey by Archaeological Research Center personnel. The human remains were curated at the Archaeological Research Center. No known individual was identified. The five associated funerary objects are four flakes and one mollusk shell fragment.

Mounds in the James River Valley date to the Woodland period (A.D. 1–1250).

In 1998, human remains representing a minimum of six individuals were removed from a burial pit, 39BN124/99–63, by Archaeological Research Center personnel in Brown County, SD. The pit was disturbed by contractors mining gravel on private land. The human remains were curated at the Archaeological Research Center. No known individuals were identified. No associated funerary objects are present.

Morphologically, the human remains are similar to other human remains from the Late Woodland period (A.D. 500–1400).

In 1980, human remains representing a minimum of two individuals were removed from Ufford Mounds, 39CL2/97–91, in Clay County, SD, by South Dakota State Historical Preservation Office personnel. The human remains were exposed during agricultural activities. The human remains were curated at the W.H. Over Museum in Vermillion, SD, and transferred to the Archaeological Research Center in 1997. No known individuals were identified. No associated funerary objects are present.

Earlier museum excavations at the Ufford Mounds support a date of Late Woodland or Initial Middle Missouri period (A.D. 500–1350).

In 1990, human remains representing a minimum of one individual were removed from a hill slope above a lake, 39CD63/90–112, in Codington County, SD. A local pathologist determined that the human remains were not of forensic significance. The Codington County Sheriff's Department transferred the human remains to the Archaeological Research Center. No known individual was identified. No associated funerary objects are present.

Based on the physical condition of the human remains they were most likely interred over 100 years ago. The human remains are most likely Native American because of their burial context and tooth wear pattern.

At an unknown date, human remains representing a minimum of four individuals were removed from the Winter site, 39DE5/94–761, in Deuel County, SD. In 1988, the human remains were donated to Roy Lake State Park, Marshall County, SD. In 1994, the human remains were transferred to the Archaeological Research Center. No known individuals were identified. No associated funerary objects are present.

The Winter site dates from Paleo-Indian to the Late Prehistoric period (10,000 B.C.- A.D. 1700).

In 1989, human remains representing a minimum of one individual were removed from a stone-covered burial pit, 39HD73/90–109, by a farmer digging for rocks in Hand County, SD. A physical anthropologist determined that the human remains were not of forensic significance. The Hand County Sheriff's Department transferred the human

remains to the Archaeological Research Center. No known individual was identified. No associated funerary objects are present.

The burial most likely dates to A.D. 990–1290 based on dating techniques done on behalf of the Hand County Sheriff's Department.

In 1979, human remains representing a minimum of one individual were discovered eroding out of a talus slope, 39HN129/81–53, during a stock dam check in Harding County, SD, and collected by South Dakota Department of Agriculture personnel. In 1981, the human remains were transferred to the Archaeological Research Center. No known individual was identified. No associated funerary objects are present.

In the mid-twentieth century, human remains representing a minimum of one individual were removed from DeGrey site, 39HU205/92–202, in Hughes County, SD, by a landowner. At an unknown date, the human remains were transferred to the Archaeological Research Center. No further documentation was found regarding the collection or transfer of the human remains. No known individual was identified. No associated funerary objects are present.

The DeGrey site dates to the Woodland, Initial, and Extended Coalescent periods (A.D. 1–1675).

In 1941, human remains representing a minimum of one individual were removed from Burial Pit 1 at the Scalp Creek site, 39GR1/94–199, in Gregory County, SD, by E.E. Meleen of the W.H. Over Museum, as part of a Works Projects Administration project. The human remains were curated at the W.H. Over Museum and transferred to the Archaeological Research Center in 1974. No known individual was identified. The one associated funerary object is a tanned hide fragment.

The Scalp Creek site dates to the Late Woodland period (A.D. 800–1200) and the Extended Coalescent Tradition (A.D. 1500–1675).

In 1929, human remains representing a minimum of three individuals were removed from Montrose Mounds, 39MK1/93–13, in McCook County, SD, during road construction activities. The human remains were curated at the W.H. Over Museum and transferred to the Archaeological Research Center in 1974. No known individuals were identified. No associated funerary objects are present.

The Montrose Mounds date to the Woodland period (A.D. 1–1000).

Between 1930 to 1950, human remains representing a minimum of six individuals were discovered in Perkins County, SD, and donated to Fred Jennewein, a local museum owner. In 1980, the Jennewein collection was donated to the Cultural Heritage Center, Pierre, SD. In the 1990s, the human remains from the Jennewein collection were transferred to Archaeological Research Center and accessioned into the museum's collections (39PE/90–108, 94–749 to 94–752, and 96–200). No known individuals were identified. No associated funerary objects are present.

Three of the individuals date to the Late Prehistoric period (A.D. 500–1750) and the other three individuals have no known date.

In 1935, human remains representing a minimum of one individual were discovered near Wilmot, 39RO/97–137, Roberts County, SD, by Mr. Jenson. The human remains were donated by Mr. Jenson to the W.H. Over Museum later that same year. In 1935, the W. H. Over Museum loaned the human remains to Dr. A.E. Jenks of the University of Minnesota. In 1997, the University of Minnesota Wilford Archaeology Lab found the human remains in their collections and transferred them to the Archaeological Research Center. No known individual was identified. The one associated funerary object is a radius.

The human remains date to the Archaic period (6000 B.C-A.D. 1).

In 1923, human remains representing a minimum of one individual were removed from Daugherty Mounds, 39RO10/92–210B, in Roberts County, SD, by W.H. Over Museum personnel. In 1974, the human remains were transferred to the Archaeological Research Center. No known individual was identified. The two associated funerary objects are a copper bead and a small bone wristlet.

The Daugherty Mounds date to the Woodland period (A.D. 500–1100).

In 1994, human remains representing a minimum of one individual were exposed by road construction above Big Stone Lake, 39RO86/95–22, in Roberts County, SD, and collected by South Dakota's State Archaeologist. The human remains were curated at the Archaeological Research Center. No known individual was identified. No associated funerary objects are present.

The human remains probably date to the Plains Village period (A.D. 900–1700) based on ceramics found in the vicinity, but not in association with the burial.

In 1979, human remains representing a minimum of one individual were found along the Missouri River between Cow and Spring Creeks, 39SL/98–175, in Sully County, SD. The human remains were sent to the South Dakota Division of Criminal Investigations and transferred to the Archaeological Research Center at an unknown date. No known individual was identified. No associated funerary objects are present.

In 1869, human remains representing a minimum of one individual were discovered at an unknown location in southeastern Montana. In 1939, E.C. Coleman of Spearfish, SD, loaned the human remains to the Adams Museum, Deadwood, SD. The human remains were curated by the Adams Museum until 1995, when they were transferred to the Archaeological Research Center and accessioned into the museum's collections (24/97–32). No known individual was identified. The three associated funerary objects are copper coiled earrings.

The human remains date to the Historic period (post A.D. 1750).

At an unknown date, human remains representing a minimum of 14 individuals were brought to the Dacotah Prairie Museum, Aberdeen, Brown County, SD. The Dacotah Prairie Museum had no documentation related to the human remains. In 1993, the human remains were transferred to the Archaeological Research Center and accessioned into the museum's collections (93–10A). No known individuals were identified. No associated funerary objects are present.

Based on morphological features and post-mortem treatment the human remains date to the Northeast Plains Woodland period (400 B.C.- A.D. 1250).

In 1965, human remains representing a minimum of one individual were donated to the Sioux City Public Museum, IA, by George Olson. The museum's accession record states that the human remains were found 9 miles from Miles City, SD, however, no record of this city has ever been found. In 1994, the Sioux City Public Museum transferred the human remains to the Archaeological Research Center and accessioned into the museum's collections (94–748). No known individual was identified. No associated funerary objects are present.

The morphological features of the cranium suggest a date of Middle Plains Woodland period (A.D. 400–900).

At an unknown date, human remains representing a minimum of 16 individuals were accessioned into the collections at the W.H. Over Museum. In 1997, the human remains were transferred to the Archaeological Research Center and accessioned into the museum's collections (97–119, 97–122 to 7, 97–131 to 6, and 99–288). No known individuals were identified. The four associated funerary objects are one canine tooth, one clay ball, one fish bone, and one seed.

One individual dates to the Historic period (post A.D. 1850). The other 15 individuals have no provenience and are unassignable to a cultural period.

In 2000, human remains representing a minimum of six individuals were anonymously donated to Augustana College, Sioux Falls, SD, and then transferred to the Archaeological Research Center and accessioned into the museum's collections (00–38 to 41). No known individuals were identified. No associated funerary objects are present.

The human remains have no provenience and are unassignable to a cultural period.

A physical anthropological assessment of the human remains for the 70 individuals described above resulted in a determination that the individuals are most likely Native American. An evaluation by professional staff at the Archaeological Research Center of the manner and location of burial, and types of associated funerary objects found with the individuals also supports an identification of the human remains as Native American and are culturally unidentifiable to any present-day Indian tribe.

The map of Indian Land Areas Judicially Established in 1978 establishes most of South Dakota and large parts of Minnesota, and adjacent portions of North Dakota, Montana, Wyoming, Nebraska, and Iowa as historically Sioux aboriginal lands. The Sioux are represented today by the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Based on historical documents, oral history, and archeological data, the Cheyenne, Iowa, Omaha, Otoe & Missouria, and Sac & Fox people also occupied what is now present-day South Dakota and the surrounding region, and are represented today by the Iowa Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Officials of the Archaeological Research Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 70 individuals of Native American ancestry. Officials of the Archaeological Research Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 11 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Archaeological Research Center have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

In November 2005, the Archaeological Research Center requested that the Review Committee recommend disposition of the human remains of 70 culturally unidentifiable human remains and 11 associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota on behalf of themselves and the Indian tribes listed above that comprise a consortium of 17 Indian tribes. The Review Committee considered the proposal at its November 2005 meeting in Albuquerque, NM, and recommended disposition of the human remains and associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota, on behalf of Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In July 2003, the Flandreau Santee Sioux Tribe of South Dakota submitted a request to the Archaeological Research Center for repatriation of the culturally unidentifiable human remains to themselves, on behalf of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

A November 23, 2005, letter from the Designated Federal Officer, on behalf of the chair of the Review Committee, to the Archaeological Research Center transmitted the Review Committee's recommendation that the Archaeological Research Center effect disposition of the physical remains of 70 culturally unidentifiable human remains and 11 associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota on behalf of the 17 Indian tribes listed above contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Renee M. Boen, Repository Manager, Archaeological Research Center, 2425 E. St. Charles St., Rapid City, SD 57703, telephone (605) 394–1936, before May 26, 2006. Disposition of the human remains and associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota on behalf

of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; Yankton Sioux Tribe of South Dakota; and themselves, may proceed after that date if no additional claimants come forward.

The Archaeological Research Center is responsible for notifying the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: April 11, 2006.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E6–6259 Filed 4–25–06; 8:45 am]

BILLING CODE 4312–50–S

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and Museum of Anthropology, Washington State University, Pullman, WA, and Nez Perce National Historical Park, Spaulding Visitor Center, Spaulding, ID

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and in the possession of the Museum of Anthropology, Washington State University, Pullman, WA, and Nez Perce National Historical Park, Spaulding Visitor Center, Spaulding, ID. The human remains and associated funerary objects were removed from the Palúus (Palus) Cemetery in Franklin County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Army Corps of Engineers St. Louis District Mandatory Center of Expertise for the Curation and Management of Archaeological Collections professional staff and a detailed assessment of the associated funerary items was made by Museum of Anthropology, Washington State University professional staff in consultation with lineal descendants and representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Nez Perce Tribe, Idaho; and Wanapum Band, a non-federally recognized Indian group.

In 1964, human remains representing a minimum of 260 individuals were removed from the Palúus (Palus) Cemetery (45FR36B), Franklin County, WA, by Washington State University professional staff, under the direction of the Army Corps of Engineers, Walla Walla District. The excavation was undertaken to relocate the cemetery before flooding by the backwaters of dam construction. In March 1965, human remains representing an unknown number of individuals were re-interred on a hill overlooking the original burial site. The remainder of the human remains and associated funerary objects were housed at the University of Idaho, Moscow, ID, and Museum of Anthropology, Washington State University, Pullman, WA. In 2000, the human remains and associated funerary items at the University of Idaho were transferred to Washington State University. In 1995 and 2005, detailed assessments were done that determined human remains from the Palus Cemetery representing a minimum of 94 individuals are present in the extant collection. There are four known individuals identified. The four known individuals are Mrs. Helen Fisher, Chief Old Bones, and two other members of the Old Bones family. The remaining 90 individuals are unidentified. The 6,220 associated funerary objects are 1 Jefferson Peace Medal; 26 digging sticks; 8 arrow fragments; 1 axe head; 1 baby rattle; 2 beaded and studded vests; 10 beaded straps; 1 beaded jackknife with bone handle; 1 beaded leather ornament; 1 bone comb; 1 bone digging stick handle; 6 bird bone whistles; 3 bottle caps; 2 bottle openers; 1 bow; 1 brass candlestick ornament; 1 brass tube; 1 bridle bit; 18 bullet cartridges; 1 cannon ball; 28 ceramic objects; 1 ceramic cup and saucer set; 1 Chinese coin; 9 chipped stone bifaces; 60 chipped stone flakes; 2 chipped stone net sinkers; 6 projectile points; 7 chipped stone tools; 1 clay ornament; 1 cloth cap; 4 cobble cores or tools; 1 coin purse; 1 cold cream jar; 1 copper crucifix; 3 cradleboards; 2 crescent shaped leather pieces; 1 decorated bone handle; 3 dice; 3 drum sticks; 1 eye water bottle with yellow powder inside; 1 fabric coin purse; 4 fruit pits; 1 pair of scissors fused to a spoon; 12 glass bottles; 1 glass ball; 2 glass cups; 11 glass fragments; 1 glass lid; 2 glass ornaments; 1 glass pipe bowl; 1 glass swizzle stick; 3 hammerstones; 4 harmonicas; 1 horn comb; 1 horn spoon; 1 horse hair pillow; 1 ice pick; 7 metal spikes; 3 knives and leather sheaths; 3 lead balls; 36 leather belts; 1 leather coffin handle; 2 leather comb cases and combs; 11 leather pouches; 1 leather purse; 21 saddle rings and stirrups; 6 leather straps; 3 keys; 3 marbles; 4 harness fragments; 1 metal ball; 4 metal bead bracelets; 23 belt buckles; 4 bolts;

3 metal bowls; 135 metal bracelets; 1 shell and button ornament; 16 metal clasps; 1 metal clip; 4 metal coils; 12 metal combs; 1 metal compact; 5 metal containers; 3 metal cuff ornaments; 15 metal cups; 1 metal cylinder with chain; 1 metal dish; 1 metal epaulet; 1 metal finger guard; 1 metal flute; 1 metal fork; 1 metal grommet; 6 gun parts; 7 metal handles; 1 metal hinge; 2 metal knives; 1 metal ladle; 3 metal jar lids; 1 metal lighter; 1 metal loop; 1 metal object encased in leather; 12 metal ornaments; 1 metal pail; 1 metal picture frame fragment; 2 metal pipe bowl and stem; 1 metal purse; 65 metal rings; 40 metal spoons; 13 metal springs; 8 metal straight pins; 5 toys; 19 mirrors; 11 moccasins; 1 nipple topped maul; 3 notched arrow shafts; 2 pencils; 3 pestles; 15 plastic combs; 3 plastic pipe bowl and stems; 2 pocket knives; 1 kidney stone; 4 projectile point fragments; 32 quirts; 1 rosary; 1 rubber band; 12 safety pins; 13 pairs of scissors; 2 worked sticks; 1 shell comb; 367 shell ornaments; 1 stone bead; 1 stone fused to buckle; 1 stone mortar; 5 stone ornaments; 1 stone pipe bowl; 28 studded and beaded leather belts; 12 thread spools; 5 tweezers; 20 sticks with wrapping and lashing; 87 unidentified metal items; 6 unidentified modified bone items; 1 unidentified plastic item; 7 wooden combs; 1 wooden fan; 3 wooden gaming pieces; 5 wood and bone handles; 2 wooden ornaments; 4 wooden pipe stem fragments; 2 wooden spindles; 4 unidentified worked wood pieces; 359 lots wood fragments; 1 lot wound string; 7 lots yellow ochre; 286 lots glass, metal, shell, wood, plastic, and ceramic buttons; 2015 lots glass, metal, shell, and elk tooth beads; 39 lots bird and mammal remains; 12 lots animal hide and fur; 3 lots antler fragments; 16 lots antler tines; 32 lots bag residue; 47 lots basketry fragments; 2 lots bow fragments; 5 lots ceramic fragments; 3 lots coffin handles; 14 lots cordage; 20 lots cradleboard pieces; 1 lot curtain rings; 1 lot epaulet braid; 427 lots fabric; 10 lots feathers; 1 lot dish fragments; 316 lots leather, hide, and fur fragments; 2 lots insect remains; 23 lots saddle parts; 2 lots fabric, bead, thimble, and cordage masses; 96 lots matting; 34 lots metal bracelet fragments; 11 lots metal cans; 3 lots metal can fragments; 6 lots metal chain; 1 lot metal container fragments; 8 lots metal cup fragments; 8 lots metal discs; 1 lot metal dish and spoon fragments; 242 lot metal fragments; 1 lot metal hinge fragments; 30 lots metal ring fragments; 1 lot metal rivets and buckles; 22 lots metal spoon fragments; 16 lots metal studs; 1 lot metal tax tokens; 18 lots metal trunk hardware; 6 lots metal tubing; 1 lot watch gears; 12 lots mirror pieces; 4 lots moccasin fragments; 278 nails; 1 nested metal containers; 1 lot newspaper; 2 lots painted wood; 8 lots paper fragments; 2 lots plant remains; 1 lot gaming sticks; 1 lot music box parts; 20 lots red ochre; 1 lot reeds; 9 lots rolled brass tinklers; 1 lot rope; 2 lots rubber fragments; 18 lots safety pin fragments; 16 lots seeds; 3 lots shell ornament fragments; 1 lot shellfish remains; 2 lots shoe fragments; 24 lots small gauge metal chain; 9 lots small stones; 1 lot small wooden box parts; 4 lots soil samples; 4 lots spoon fragments; 3 lots string; 22 lots thimbles; 10 lots unidentified organic matter; 5 lots unidentified modified bone fragments; 15 lots unidentified organic materials; 2 lots wire; 4 lots wooden comb fragments; 10 lots wooden gaming stick fragments; 2 lots wooden gun stock fragments; 1 lot wooden matches; 13 lots of sticks; 83 bells; 6 lots bell fragments; and 2 lots worked wood.

Based on osteological information and associated funerary objects the human remains from the Palus Cemetery have been determined to be Native American. The Palus Indian village area is composed of a cluster of sites located on the west side of the Palouse River and Snake River confluence in southeastern Washington. The sites are identified as 45FR36A, B, and C. Area A is a late prehistoric village, area B is a defined cemetery associated with the Palus village, and area C is an earlier housepit cluster. The occurrence of clearly defined burial areas near to, but set apart from, the village areas have been defined by anthropologists as a hallmark of the late prehistoric period on the lower Snake River (Leonhardy and Rice 1970). The earliest written account of the Palus village complex was made by Lewis and Clark who passed the mouth of the Palouse River and the unoccupied village on October 13, 1805 (Thwaites 1905). In 1812, Ross Cox, a Pacific Fur Company trader, documented his encampment at the Palus village (1957:89–91). The Palus village later became a stopping point for travelers moving through the Snake River and the interior Palouse country.

Treaties were negotiated and signed as the Washington Territory expanded. Many Palus Indians were sent to the Indian Territory in Oklahoma after the Nez Perce War of 1877. In the final decade of the nineteenth century, the Palus Indians remaining on their traditional lands were surrounded by an expanse of settlers and began moving onto the Colville, Nez Perce, Umatilla, and Yakama reservations. By 1897, approximately 75 Palus Indians lived at Palus village. In the spring of 1905, a steamboat of American soldiers arrived at the village and many of the residents were removed. The few people who remained at Palus village included Chief Old Bones, his wife, and at least two of their children. In 1916, Chief Old Bones died and was buried in the Palus cemetery. His grave was marked with a headstone that remained identifiable at the time of the excavation. A wife and at least two children of Chief Old Bones were also buried at Palus next to the grave of Chief Old Bones. The last full-time resident of the Palus village was Mr. Sam Fisher. His wife, Mrs. Helen Fisher was the last individual buried in the cemetery following her death in 1944.

Recent studies done by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Nez Perce Tribe, Idaho, document that each tribe has cultural affiliation with the Palus Indians as a result of the dispersion of the Palus people to each of the reservations during the late 19th and early 20th centuries. The cultural affiliation of all the tribes is further strengthened by living enrolled members that have documented ancestors buried at Palus. The correlation of these members with specific burials is not possible, except for Mr. Gordon Fisher, from the Confederated Tribes of the Colville Reseration, Oregon, who traces his ancestry directly and without interruption to Mrs. Helen Fisher. There is another unnamed lineal descendant that can trace ancestry directly and without interruption to Chief Old Bones. The two lineal descendants have chosen not to submit a claim for the human remains and associated funerary objects, as documented in an agreement signed on February 13, 2006.

Officials of the Army Corps of Engineers, Walla Walla District have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of 94 individuals of Native American ancestry. Officials of the Army Corps of Engineers, Walla Walla District also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 6,220 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Army Corps of Engineers, Walla Walla District have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group

identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Nez Perce Tribe, Idaho.

Any lineal descendant or representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Lieutenant Colonel Randy L. Glaeser, Commander, Walla Walla District Corps of Engineers, 201 North Third Avenue Walla Walla, WA 99362, telephone (509–527–7700), before May 26, 2006. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Nez Perce Tribe, Idaho may proceed after that date if no additional claimants come forward.

The Army Corps of Engineers, Walla Walla District is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Nez Perce Tribe, Idaho; and Wanapum Band, a non-federally recognized Indian group that this notice has been published.

Dated: April 13, 2005

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E6–6260 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Inventory Completion: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from Hancock County, ME.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Penobscot Tribe of Maine.

At an unknown date, human remains representing a minimum of two individuals were collected from a shell heap on Pond Island, Blue Hill Bay, in Hancock County, ME, during an excavation sponsored by the Wilson Museum, Castine, ME. The individual who collected the human remains is unknown. In 1965, the human remains were accessioned into the American Museum of Natural History collections as a gift from the Wilson Museum and Ms. Norman W. Doudiet. No known individuals were identified. No associated funerary objects are present.

Geographic and temporal information suggest the human remains are from the postcontact territory of the Penobscot Indians. A radiocarbon date of 245120 years B.P. associated with the human remains places them in the postcontact period. During the postcontact period, the portion of Maine from which these human remains were recovered was part of the traditional territory of the Penobscot Indians.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Penobscot Tribe of Maine.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before May 26, 2006. Repatriation of the human remains to the Penobscot Tribe of Maine may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Penobscot Tribe of Maine that this notice has been published.

Dated: March 31, 2006.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E6–6263 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service(s administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 31 cultural items are from 2 shamans' kits. The first shaman's kit contains 18 cultural items; the second shaman's kit contains 14 cultural items. At an unknown date, Lieutenant George Thornton Emmons acquired the 31 cultural items. In 1894, the American Museum of Natural History purchased the shamans' kits from Lieutenant Emmons and accessioned them into its collection that same year.

The first shaman's kit consists of one box drum, one beating stick, one bundle of beating sticks, three ornamental portions of dance headdresses, one headdress mask, three wooden carvings, one portion of a wooden rattle, three strings of scallop shells, four wooden guards or spirits, and one doctor's urine box.

The box drum is made from wood and is painted to represent a brown bear. The beating stick measures about 32 cm x 3 cm x 1 cm. The bundle of beating sticks measures 37 cm x 14 cm x 7 cm and consists of 11 sticks tied together

with plant fiber. The first portion of one dance headdress is a wooden figure carved to represent a salmon that is painted graphite and black. The second and third partial headdresses are wooden figures carved to represent bears' heads. The wooden headdress mask is carved to represent a Tlingit spirit (a dead man) and is painted black and red. The first wooden carving depicts a land otter that is sitting up. The second carving depicts a spirit with a frog in its stomach, and the third wooden carving depicts a spirit with a land otter coming out of its mouth. The partial rattle consists of a wooden handle attached to the rattle's body that is carved to represent an oyster-catcher. The three strings of shells consist of scallop shells attached with hide. The first wooden guard or spirit is carved to represent an eagle, and the second is carved to represent a bear. The third wooden guard or spirit is carved to represent a figure with a fighting headdress, and the fourth is carved to represent many spirits. The doctor's urine box is made of wood, stands on two legs, and measures approximately 32 cm x 22 cm x 18 cm.

The second shaman's kit consists of one wooden rattle, four wooden masks, two headdress masks, one headdress, one ceremonial hat, two ornamental tops of dance headdresses, and three sections of walrus ivory.

The wooden rattle is carved to represent the sun and is ornamentally painted to depict a frog. The first wooden mask is carved to represent a land otter and is ornamentally painted red, black, and mineral blue, with a devil fish painted on each cheek. The second wooden mask is carved to represent a man's face; the center of the forehead is raised and is carved to represent a killer whale's dorsal fin. The mask is ornamentally painted in red, black, and native mineral blue. Tail feathers of a red wing flicker are painted on each cheek, while the forehead is painted to depict a raven. The third wooden mask is carved to represent the spirit of an old man named ''Shou-Kee-yake'' and is painted red, black, and native mineral blue. The fourth wooden mask is carved to represent an old woman with a labret in the lower lip. The mask is also ornamentally painted red, black, and native mineral blue; and on the face are painted the tail feathers of the red wing flicker. The two headdress masks are made of wood. The first headdress mask, carved to represent an eagle, is painted red, black, and native mineral blue, and is ornamented with copper eyebrows. The second headdress mask is carved to represent a ground hog and is ornamented with copper eyebrows and operculum teeth. Above the forehead, three carved spirit faces are painted red, black, and native mineral blue. The headdress is made of wood and hide and is painted red, black, and native mineral blue. It is carved to represent a kingfisher above and a frog below, with both figures ornamented with copper eyebrows and operculum teeth. The ceremonial hat is made of woven spruce root and is painted to depict a spirit of a man with a devil fish on either hand. The first ornamental portion of the dance headdress consists of four woven spruce root disks, and the second portion consists of five woven spruce root disks. The walrus ivory is in three pieces.

The cultural affiliation of the 31 cultural items is Hutsnuwu (''Hootz-ar-tar qwan'') Tlingit as indicated through museum records and consultation with representatives of the Central Council of the Tlingit & Haida Indian Tribes. Museum records identify the items as having come from the grave houses of two doctors of the ''Hootz-ar-tar qwan.'' The Central Council of the Tlingit &Haida Indian Tribes has requested the shamans' kits on behalf of the clans of Angoon who comprise the Hutsnuwu Tlingit.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3) (B), the 31 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of Native American individuals. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before May 26, 2006. Repatriation of the unassociated funerary objects to the Central Council of the Tlingit & Haida Indian Tribes may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Angoon Community Association, Central Council of the Tlingit & Haida Indian Tribes, Kootznoowoo Incorporated, and Sealaska Heritage Institute that this notice has been published.

Dated: March 23, 2006.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E6–6264 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items: South Dakota State Historical Society, Archaeological Research Center, Rapid City, SD

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the South Dakota State Historical Society, Archaeological Research Center, Rapid City, SD, that meet the definition of ''unassociated funerary object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 14 cultural items are 2 unmodified freshwater bivalve shells, 1 lot of charred wood fragments, 1 lot of bone beads, 1 lot of flint flakes, 1 shell bead, and 8 shell pendants removed from Gregory and Roberts Counties, SD.

A detailed assessment of the cultural items was made by the Archaeological Research Center's professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian

Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

In 1923, 11 cultural objects were removed from Daugherty Mounds, 39RO10, in Roberts County, SD, by W.H. Over Museum personnel. The 11 cultural items are 1 lot of bone beads, 1 lot of flint flakes, 1 shell bead, and 8 shell pendants, which were found in association with burials. The cultural items were curated at W.H. Over Museum and then transferred to the Archaeological Research Center in 1974. The human remains with which the 11 cultural items were originally associated were reburied in the mound at the close of the excavation in 1923.

The Daugherty Mounds date to the Woodland period (A.D. 500 - A.D. 1100).

In 1941, three cultural items were removed from the Scalp Creek site, 39GR1, in Gregory County, SD, by E.E. Meleen from the W.H. Over Museum, Vermillion, SD, as part of a Works Projects Administration project. The three cultural items are two unmodified freshwater bivalve shells and one lot of charred wood fragments, which were found in association with burials. The cultural items were curated at W.H. Over Museum and then transferred to the Archaeological Research Center in 1974. The human remains with which the lot of charred wood fragments were originally associated were reburied in the mound at the close of the excavation in 1941. The human remains with which the two unmodified freshwater bivalve shells were originally associated were reburied along the Missouri River near Fort Pierre in 1986.

The Scalp Creek site dates to the Late Woodland period (A.D. 800 - A.D. 1200) and the Extended Coalescent Tradition (A.D. 1500 - A.D. 1675).

Evaluation of documentation from the excavation of the Daugherty Mounds and Scalp Creek sites indicates that the cultural items were found in association with Native American human remains. Other human remains from the Daugherty Mounds and Scalp Creek sites that remain in the possession and control of the Archaeological Research Center have been identified as Native American based on physical anthropological assessment, manner and location of burial, and types of funerary objects associated with the human remains.

The Daugherty Mounds and Scalp Creek sites are located within Sioux aboriginal land as determined by the Indian Claims Commission and shown on the map of Indian Land Areas Judicially Established (1978). The Sioux are represented today by the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Based on historical documents, oral history, and archeological data, the Cheyenne, Iowa, Omaha, Otoe & Missouria, and Sac & Fox people also occupied what is now present-day South Dakota and the surrounding region, and are represented today by the Iowa Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Officials of the Archaeological Research Center have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 14 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony, and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of Native American individuals. Officials of the Archaeological Research Center also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably be traced between the cultural objects and any present-day Indian tribe.

In July 2003, the Flandreau Santee Sioux Tribe of South Dakota submitted a request to the Archaeological Research Center for repatriation of the culturally unidentifiable human remains and funerary objects from eastern, central, and northwestern South Dakota, and southeastern Montana, including the 14 unassociated funerary objects from the Daugherty Mounds and Scalp Creek sites, on behalf of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Pursuant to 43 CFR 10.9 (e)(6), museums and Federal agencies must retain possession of culturally unidentifiable human remains pending promulgation of 43 CFR 10.11 unless legally required to do otherwise or recommended to do otherwise by the Secretary of the Interior. The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In November 2005, the Archaeological Research Center requested that the Review Committee recommend disposition of the culturally unidentifiable human remains and associated funerary objects from eastern, central, and northwestern South Dakota, and southeastern Montana to the Flandreau Santee Sioux Tribe of South Dakota on behalf of themselves and the Indian tribes listed above that comprise a consortium of 17 Indian tribes. The Review Committee considered the proposal at its November 2005 meeting in Albuquerque, NM, and recommended disposition of the human remains and associated funerary objects to the tribal consortium. A November 23, 2005 letter from the Designated Federal Officer, on behalf of the chair of the Review Committee, to the Archaeological Research Center transmitted the Review Committee's recommendation that the Archaeological Research Center effect disposition of the culturally unidentifiable human remains and

associated funerary objects to the tribal consortium contingent on the publication of a Notice of Inventory Completion in the **Federal Register**.

Disposition of unassociated funerary objects for which a relationship of shared group identity cannot be reasonably traced to a present-day Indian tribe does not require a recommendation from the Secretary. However, since these unassociated funerary objects were removed from two of the same sites for which human remains were already considered by the Review Committee, the Archaeological Research Center has decided to effect a similar disposition to the Flandreau Santee Sioux Tribe of South Dakota on behalf of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the 14 unassociated funerary objects should contact Renee M. Boen, Repository Manager, Archaeological Research Center, 2425 E. St. Charles St., Rapid City, SD 57703, telephone (605) 394–1936, before May 26, 2006. Disposition of the unassociated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota on behalf of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; Yankton Sioux Tribe of South Dakota; and themselves, may proceed after that date if no additional claimants come forward.

The Archaeological Research Center is responsible for notifying the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community, Minnesota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: April 13, 2006.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E6–6268 Filed 4–25–06; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *AOL Express, Inc., et al.,* Civil Action No. C06–5204FDB, was lodged on April 13, 2006, with the United States District Court for the Western District of Washington. The consent decree requires defendants AOL Express, Inc., Arkema Inc., Edward and Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles P. and Patricia Curran, Dunlap Towing Company, Estate of Norman Nordlund, Estate of Leslie P. Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina, Inc., Judy Johnson, Jones Chemicals, Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co., Louisiana-pacific Corporation, Phyllis Nordlund, Nordlund Boat Company, Inc., Don and Alba Oline, Ronald Oline, Donald S. and Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole & Charlie's Marinas Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc., West Waterway Associates, P.S. and Zidell Marine Corporation to compensate natural resource trustees for natural resource damages in Commencement Bay, Washington, resulting from releases of hazardous substances. The trustees are the State of Washington, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of the Interior. Under the consent decree, defendants will fund the construction of a salmon habitat restoration project in Pierce County, Washington, pay the trustees $150,000 for project oversight, and reimburse a total of $1,793,888.46 in trustee damage assessment costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AOL Express, Inc.,* DOJ Ref. # 90–11–2–1049/6.

The proposed consent decree may be examined at the office of theUnited States Attorney, 601 Union Street, Seattle, WA 98101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html* and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of

$33.50 (25 cents per page reproduction costs), payable to the U.S. Treasury.

**Robert E. Maher, Jr.,**

*Ass't Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–3938 Filed 4–25–06; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Caterpillar, Inc. and Camoplast Rockland Ltd*, Civil Action No. 06–1096–JTM, was lodged on April 13, 2006, with the United States District Court for the District of Kansas. This consent decree requires the defendant Caterpillar, Inc. to pay a civil penalty of $300,000 and defendant Camoplast Rockland Ltd to perform injunctive relief in the form of installation of control technology to address Clean Air Act violations for the failure to apply for a case-by-case determination of maximum achievable control technology (MACT) as required by the Section 112(g) of the Clean Air Act at the defendant Camoplast Rockland Ltd's manufacturing plant located in Emporia, Kansas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Caterpillar, Inc. and Camoplast Rockland Ltd*, DOJ Ref. 90–5–2–1–08552.

The proposed consent decree may be examined at the office of the United States Attorney, 1200 Epic Center, 301 North Main Street, Wichita, Kansas 67212, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the comment period, the consent decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.75 for *United States* v. *Caterpillar, Inc. and Camoplast Rockland Ltd*, (25 cents per page reproduction cost) payable to the U.S. Treasury.

**W. Benjamin Fisherow,**

*Deputy Section Chief, Environmental Enforcement Section.*

[FR Doc. 06–3941 Filed 4–25–06; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 11, 2006, a proposed Partial Consent Decree in *Crane Co., et al.* v. *United States*, Civil Action Nos. CIV–03–2226–PHX–ROS and CIV–04–1400–PHX–ROS (consolidated) was lodged with the United States District Court for the District of Arizona.

The Partial Consent Decree settles claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9206 and 9207, in connection with the northern portion of the Phoenix-Goodyear Airport Area Superfund Site in Goodyear, Arizona. Under the Partial Consent Decree the defendants will conduct all necessary investigatory and remedial activities at the Site, pay $6.7 million to reimburse the United States for its past costs, pay future response costs, perform a supplemental environmental project valued at $1 million, and pay a civil penalty of $500,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *Crane Co., et al.* v. *United States*, D.J. Ref. 90–11–2–248/1.

The Partial Consent Decree may be examined at U.S. EPA Region IX, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Partial Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $139.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Henry S. Friedman,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–3940 Filed 4–25–06; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on April 12, 2006, a proposed Consent Decree in *United States and the State of Wisconsin* v. *NCR Corporation and Sonoco-U.S. Mills, Inc.*, Civil Action No. 06–CV–00484 (E.D. Wis.) was lodged with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree concerns polychlorinated biphenyl (''PCB'') contamination in a particular area of the Lower Fox River and Green Bay Site. Under the proposed settlement set forth in the Consent Decree, NCR Corporation and Sonoco-U.S. Mills, Inc. (the ''Defendants'') would implement an initial phase of the cleanup remedy in that area, which has been designated as the Phase 1 Project Area. The Phase 1 Project Area is just downstream from the De Pere dam, along the west bank of the Lower Fox River, near the City of Green Bay, Wisconsin. The Consent Decree would require the Defendants to dredge PCB-contaiminated sediments from the Phase 1 Project Area and to dispose of the dredged sediments in an upland landfill, at an estimated cost of $30 million. The settlement would not resolve the Defendants' potential liability for additional response activities or response costs relating to the Phase 1 Project Area or other areas of the Site.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Wisconsin* v. *NCR Corporation and Sonoco-U.S. Mills, Inc.*, Civil Action No. 06–CV–00484 (E.D. Wis.) and D.J. Ref. No. 90–11–2–1045/5.

The Consent Decree may be examined at: (1) The offices of the United States Attorney, 517 E. Wisconsin Avenue, Room 530, Milwaukee, Wisconsin; and (2) the offices of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $36.00 (144 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. For a copy of the Consent Decree alone, without appendices, please enclose a check in the amount of $19.25 (77 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–3939 Filed 4–25–06; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on April 17, 2006, a proposed consent decree in *United States of America* v. *Valero Terrestrial Corporation and Solid Waste Services, Inc.*, Civil Action No. 05:06–CR–43, was lodged with the United States District Court for the Northern District of West Virginia.

In this action the United States sought civil penalties for alleged violations of the Clean Air Act at the Brooke County Sanitary Landfill, located in Brooke County, West Virginia. The complaint alleged that Valero Terrestrial Corporation and Solid Waste Services, Inc. violated the New Source Performance Standards of the Clean Air Act, 42 U.S.C. 7411, and their implementing regulations, including the New Source Performance Standards for Solid Waste Landfills, 40 CFR part 60 subpart WWW, by failing to install the appropriate control technology and by failing to conduct an initial performance test and routine monitoring. The complaint also alleged that Valero Terrestrial Corporation violated an operating permit issued by the State of West Virginia pursuant to Title V of the Clean Air Act, 42 U.S.C. 7661–7661f. Under the terms of the proposed consent decree, Valero Terrestrial Corporation and Solid Waste Services, Inc. will pay a civil penalty of $300,000.00 plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Valero Terrestrial Corporation and Solid Waste Services, Inc.*, D. J. Ref. No. 90–5–2–1–08262.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of West Virginia, U.S. Courthouse and Federal Building, 1125 Chapline Street, Suite 3000, Wheeling, WV 26003 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–3937 Filed 4–25–06; 8:45 am]

**BILLING CODE 4410–15–M**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determinations Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) has determined that the Republic of Chad has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Chad qualify for the textile and apparel benefits provided under the AGOA.

**DATES:** Effective April 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** William Jackson, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

**SUPPLEMENTARY INFORMATION:** The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as beneficiary sub-Saharan African countries, provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist U.S. Customs and Border Protection in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Chad a beneficiary sub-Saharan African country. Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that the Government of Chad has taken,

I have determined that Chad has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting Chad in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

**Rob Portman,**

*United States Trade Representative.*

[FR Doc. E6–6224 Filed 4–25–06; 8:45 am]

**BILLING CODE 3190–W6–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–338]**

## WTO Dispute Settlement Proceeding Regarding Canada—Provisional Antidumping and Countervailing Duties on Grain Corn From the United States

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on March 17, 2006, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement''), the United States requested consultations regarding Canada's provisional antidumping and countervailing duties on imports of unprocessed grain corn from the United States. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS338/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before May 12, 2006 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to *FR0614@ustr.gov,* with ''Canada Corn Preliminary Injury (DS338)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

**FOR FURTHER INFORMATION CONTACT:** David Yocis, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–6150.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

### Major Issues Raised by the United States

On March 17, 2006, the United States requested consultations regarding Canada's provisional antidumping and countervailing duties on unprocessed grain corn from the United States and certain related measures. Those measures include:

- The imposition of provisional antidumping and countervailing duties on imports of unprocessed grain corn from the United States on December 15, 2005 (Canada Gazette, Part I, Vol. 153, No. 53, p. 4321, published December 31, 2005), including the preliminary determination of injury by the Canadian International Trade Tribunal (CITT) on November 15, 2005 (Canada Gazette, Part I, Vol. 153, No. 48, p. 3891, published November 26, 2005) and the accompanying Statement of Reasons, released on November 30, 2005 and available on the CITT's Web site at *ftp://ftp.citt-tcce.gc.ca/doc/english/Dumping/PreInq/determin/pi2f001_e.pdf;* and
- The Special Import Measures Act, R.S. 1985, c. S–15, and any amendments, implementing measures, and related measures.

In its preliminary injury determination, the CITT did not address or otherwise refer to certain factors mandated by the WTO agreements, such as the volume of imports, the price of imports, and the impact of imports on the domestic industry. In addition, the CITT expressly decided not to analyze the evidence before it with respect to causation, including the causal link between imports and injury and injury caused by factors other than imports. Instead, the CITT decision is based entirely on a supposed correlation between past injury to the Canadian domestic industry with past and projected future declines in the U.S. domestic price of grain corn, rather than the mandatory factors in the agreements. Further, the Special Import Measures Act would appear to require the imposition of antidumping and countervailing duties upon a CITT finding that the ''dumping and subsidizing'' of subject goods, including alleged effects of subsidies on the domestic prices of those goods in the market of the dumping or subsidizing country, have injured Canada's domestic industry, even in the absence of any finding of injury caused by dumped or subsidized imports as provided for in the WTO agreements.

USTR believes these measures are inconsistent with Canada's obligations under Articles 1, 3, and 7 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (''AD Agreement''), Articles 10, 15, and 17 of the *Agreement on Subsidies and Countervailing Measures* (''SCM Agreement''), and Article VI of the *General Agreement on Tariffs and Trade 1994.*

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0614@ustr.gov,* with ''Canada Corn Preliminary Injury (DS338)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged to also provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter.

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–338, Canada Corn Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E6–6221 Filed 4–25–06; 8:45 am]

BILLING CODE 3190–W6–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–340]**

## WTO Dispute Settlement Proceeding Regarding China—Measures Affecting Imports of Automobile Parts

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on March 30, 2006, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement), the United States requested consultations regarding China's treatment of imported motor vehicle parts, components, and accessories (''auto parts''). That request may be found at *http://www.wto.org* contained in a document designated as WT/DS340/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before May 8, 2006 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to *FR0615@ustr.eop.gov,* with China Auto Parts (DS340) in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

**FOR FURTHER INFORMATION CONTACT:** Jim Kelleher, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3858.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

### Major Issues Raised by the United States

On March 30, 2006, the United States requested consultations regarding China's treatment of imported auto parts. The measures through which China has provided such treatment include:

- Order No. 8 of the National Development and Reform Commission (May 21, 2004), *Policy on Development of Automotive Industry;*
- Decree 125 (April 1, 2005), *Measures for the Administration of Importation of Automotive Parts and Components for Complete Vehicles;*
- Customs General Administration Public Announcement No. 4 (April 1, 2005), *Rules for Determining Whether Imported Automotive Parts and Components Constitute CBU Vehicles;* and
- Any amendments, related measures, or implementing measures.

China's regulations appear to penalize manufacturers for using imported auto parts in the manufacture of vehicles for sale in China. Although China bound its tariffs for auto parts at rates significantly lower than its tariff bindings for complete vehicles, China appears to assess a charge on imported auto parts equal to the tariff on complete vehicles, if the imported parts are incorporated in a vehicle that contains imported parts in excess of specified thresholds. To the extent that the charge is applied when a vehicle is manufactured within China, it would appear to constitute a tax on imported auto parts not imposed on like domestic auto parts. The charge also appears to be applied in a manner so as to afford protection to domestic products.

To the extent that the charge is imposed upon the importation of the auto parts, it appears to constitute a charge in excess of those set forth in China's Schedule of Concessions and Commitments. Further, to the extent China may be viewed as imposing a lesser tariff on imported auto parts if the final assembled vehicle contains specified amounts of local content, it would be forgoing revenue otherwise due, and China would appear to be providing a subsidy contingent upon the use of domestic rather than imported goods. Finally, China's regulations specifically identify completely knocked down (CKD) and semi-knocked down (SKD) kits and appear to assess them the tariff for complete vehicles.

USTR believes these measures are inconsistent with China's obligations under Article 2 of the *Agreement on Trade-Related Investment Measures,* Articles II and III of the *General Agreement on Tariffs and Trade 1994,* Article 3 of the *Agreement on Subsidies and Countervailing Measures,* and Parts I.1.2 and I.1.7 of the Protocol on the Accession of the People's Republic of China, including paragraphs 93 and 203 of the Working Party Report.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0615@ustr.eop.gov,* with ''China Auto Parts (DS340)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged to also provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS–340, China Auto Parts Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E6–6222 Filed 4–25–06; 8:45 am]

**BILLING CODE 3190–W6–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Securities Exchange Act of 1934 Release No. 53684]**

## Order Extending Term of Short Sale Pilot

April 20, 2006.

On June 23, 2004, the Securities and Exchange Commission (''Commission'') approved new and amended short sale regulations in Regulation SHO under the Securities Exchange Act of 1934 (the ''Act'').[1] On July 28, 2004, the Commission issued an order (''First Pilot Order'') creating a one year Pilot (''Pilot'') suspending the provisions of Rule 10a–1(a) under the Act[2] and any short sale price test of any exchange or national securities association for short sales[3] of certain securities.[4] The Pilot was created pursuant to Rule 202T of Regulation SHO, which established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests.[5] The First Pilot Order provided that the Pilot would commence on January 3, 2005 and terminate on December 31, 2005, and that we might issue further orders affecting the operation of the First Pilot Order.[6] On November 29, 2004, we issued an order (''Second Pilot Order'') resetting the Pilot to commence on May 2, 2005 and end on April 28, 2006 to give market participants additional time to make system changes necessary to comply with the Pilot.[7] We are issuing this Order (''Third Pilot Order'') to extend the termination date of the Pilot to August 6, 2007, the date on which temporary Rule 202T expires. Extension of the Pilot termination date will maintain the status quo with regard to price tests for Pilot securities and system designs of market participants while the staff completes its analysis of the Pilot results and the Commission conducts any additional short sale rulemaking. All other terms of the First Pilot Order remain unchanged. We may issue further orders affecting the operation of the Pilot. For the reasons discussed below, the Commission finds that extension of the Pilot is necessary and appropriate in the public interest and consistent with the protection of investors.[8]

[1] Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (''Adopting Release'').

[2] 17 CFR 240.10a–1.

[3] ''Short sale'' is defined in Rule 200 of Regulation SHO, 17 CFR 242.200.

[4] Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004). Specifically, the First Pilot Order suspended price tests for the following: (1) Short sales in the securities identified in Appendix A to the First Pilot Order; (2) short sales in the securities included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the effective transaction reporting plan of the Consolidated Tape Association (''consolidated tape'') on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) effected in the period between the close of the consolidated tape and the open of the consolidated tape on the following day.

[5] 69 FR at 48012–13. We stated in the Adopting Release that conducting a pilot pursuant to Rule 202T would ''allow us to obtain data on the impact of short selling in the absence of a price test to assist in determining, among other things, the extent to which a price test is necessary to further the objectives of short sale regulation, to study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity, and to obtain empirical data to help assess whether a short sale price test should be removed, in part or in whole, for some or all securities, or if retained, should be applied to additional securities.'' *Id.* at 48009.

[6] 69 FR at 48033.

[7] Securities Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004).

[8] *See* Section 36 of the Act. In addition, pursuant to Section 3(f) of the Act, we considered the impact of this extension on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

**I. New Pilot Termination Date**

We established the Pilot as part of our review of short sale regulation in conjunction with the adoption of Regulation SHO.[9] The Pilot is designed to assist us in assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation.[10] The Pilot is currently set to terminate on April 28, 2006.

To determine whether additional rulemaking is necessary, our staff will evaluate the results of the Pilot. Although we do not plan to extend the period being studied beyond April 28, 2006, our staff's analysis will help them determine whether to recommend changes to the current short sale regulatory scheme. If we determine that any new or amended rules are necessary, we will commence the rulemaking process. This customarily involves issuing a proposing release soliciting comments on the proposed changes, analyzing such comments and, finally, adopting any final rules. The process of reviewing the data and completing any rulemaking will necessarily continue beyond the study period.

We believe that it is in the interest of the markets and investors to maintain the price test scheme established by the Pilot until any rulemaking resulting from our analysis of the data is complete. Market participants made significant changes in their systems and practices to comply with the Pilot. Absent an extension of the Pilot's end date of April 28, 2006, the pre-Pilot short sale price tests would be restored, and market participants would be required to make changes to their systems and practices to ensure that they comply with these rules. If the Commission thereafter adopts rules that remove or change the nature of price tests for some or all securities, market participants would be required to change their systems and procedures again, which could result in substantial additional costs. Extending the Pilot ending date would keep the costs of changes to a minimum and help avoid market disruption.

Prior to commencement of the Pilot, some market participants expressed concern about the duration of the Pilot.[11] We do not believe that this concern has borne out. The Second Pilot Order delayed the start of the Pilot period because market participants were not ready to begin the Pilot during the period specified in the First Pilot Order. The Pilot will be in place for slightly more than two years, with this extension. Based on our experience with the Pilot for nearly a year, the concerns regarding a prolonged time span have proven unfounded. Indeed, it would be more disruptive to end the Pilot prior to any Commission action rather than to continue it. Market participants have already undertaken the costs and burdens of systems changes, and have informed us that they would not face any additional burdens or costs from continuing the Pilot. The staff has found no evidence of market disruption during the Pilot thus far, and we do not anticipate that continuing the Pilot will trigger any problems in the future.

In the Regulation SHO adopting release, the Commission stated that it ''expects to make information obtained during the pilot publicly available.'' [12] Correspondingly, the Commission's staff arranged for the appropriate self-regulatory organizations to make transactional short selling data public on a monthly basis on their internet Web sites.[13] To promote the best quality studies and to encourage transparency, the Commission expects the SROs to continue releasing this transactional data until the end of the Pilot on August 6, 2007.

Based on the forgoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to extend the termination date of the Pilot to August 6, 2007. Accordingly, the Pilot will now terminate on August 6, 2007, unless otherwise ordered by the Commission.

**II. Conclusion**

We find that extending the termination date of the Pilot to August 6, 2007, for the reasons stated above, is necessary and appropriate in the public interest and consistent with the protection of investors.

Accordingly,

*It is hereby ordered* that the suspension of the provisions of Rule 10a–1(a) and any short sale price test of any exchange or national securities association for certain securities and time periods, as set forth in the First and Second Pilot Orders, shall terminate on August 6, 2007, instead of April 28, 2006. The Commission from time to time may issue further orders affecting the operation of the Pilot.

All other provisions of the First Pilot Order and Second Pilot Order shall remain in effect.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–6250 Filed 4–25–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 69 FR at 48032; *See* Adopting Release at 48013.

[10] 69 FR at 48032.

[11] *See* Adopting Release, 69 FR at 48012 (discussing comment letters regarding the Pilot's duration from the Nasdaq, the NYSE, and the STA).

[12] Id. at n. 9.

[13] A list of the internet Web sites making the monthly trading data public is available at *http://www.sec.gov/spotlight/shopilot.htm.*

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## In the Matter of Image Globe Solutions, Inc.; Order of Suspension of Trading

April 24, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Image Globe Solutions, Inc. (''Image Globe''), a Nevada corporation headquartered in Toronto, Ontario. Questions have arisen regarding the accuracy of assertions by Image Globe, and by others, in press releases and internet postings to investors concerning, among other things: (1) The company's assets, (2) the stated financing of the company's operations, (3) the company's private placement of 10 million shares of its common stock in January 2006, and (4) the company's stated investments in other start-up businesses.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

*Therefore, it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. e.d.t., April 24, 2006, through 11:59 p.m. e.d.t., on May 5, 2006.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 06–3980 Filed 4–24–06; 11:44 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53672; File No. SR–CBOE–2005–63]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Nullification and Adjustment of Equity Options Transactions

April 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 28, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] On April 7, 2006, the CBOE submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 6.25 to provide for an adjustment provision for transactions during opening rotation resulting from obvious errors between a non-broker-dealer customer and CBOE Market-Maker(s), as well as transactions during opening rotation between a non-broker-dealer customer and at least one non-CBOE Market-Maker(s).

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

### Rules of the Chicago Board Options Exchange

* * * * *

**Chapter VI**

**Doing Business on the Exchange Floor (Rules 6.1–6.85)**

**Section B: Member Activities on the Floor**

**Rule 6.25. Nullification and Adjustment of Equity Options Transactions**

This Rule governs the nullification and adjustment of transactions involving equity options. Rule 24.16 governs the nullification and adjustment of transactions involving index options and options on ETFs and HOLDRs. Paragraphs (a)(1), and (2) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error: An obvious pricing error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by an amount equal to at least the amount shown below:

| Theoretical price | Minimum amount |
|---|---|
| Below $2 | $0.25 |
| $2 to $5 | 0.40 |
| Above $5 to $10 | 0.50 |
| Above $10 to $20 | 0.80 |
| Above $20 | 1.00 |

Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option series is, for series traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option class in the previous two calendar months. If there are no quotes for comparison, designated Trading Officials will determine the Theoretical Price. For transactions occurring as part of the Rapid Opening System (''ROS trades'') or Hybrid Opening System (''HOSS''), Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

Price Adjustment or Nullification: Obvious Pricing Errors will be adjusted or nullified in accordance with'' (i), (ii), (iii) or (iv) below or any combination thereof'' [the following]:

*(i)* Transactions Between CBOE Market-Makers: Where both parties to the transaction are CBOE Market-Makers, the execution price of the transaction will be adjusted by Trading Officials to the prices provided in Paragraphs (A) and (B) below, minus (plus) an adjustment penalty (''adjustment penalty''), unless both parties agree to adjust the transaction to a different price or agree to bust the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error.

A. Erroneous buy transactions will be adjusted to their Theoretical Price plus an adjustment penalty of either $.15 if the Theoretical Price is under $3 or $.30 if the Theoretical Price is at or above $3.

B. Erroneous sell transactions will be adjusted to their Theoretical Price minus an adjustment penalty of either $.15 if the Theoretical Price is under $3 or $.30 if the Theoretical Price is at or above $3.

*(ii) Transactions during Opening Rotation Between a non-broker-dealer Customer and CBOE Market-Maker(s): After the fifteen minute notification period as described in (b)(1) below and until 3:30 pm central time (''CT'') on the subject trade date, where parties to the transaction are a non-broker dealer customer and CBOE Market-Maker(s), the non-broker-dealer customer may request review of the subject transaction, and the execution price of the transaction will be adjusted (provided the adjustment does not violate the customer's limit price) by Trading Officials to the prices provided in Paragraphs (A) and (B) above, without the adjustment penalty, unless both parties agree to adjust the transaction to a different price or agree to bust the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error. The option contract quantity of any adjustment shall not exceed the disseminated size by the competing options exchange that has the most liquidity in that option class in the previous two calendar months. In the event a non-CBOE Market-Maker is also party to the transaction, the adjustment procedures described below shall also apply.*

*(iii) Transactions during Opening Rotation Between a non-broker-dealer Customer and at least one non-CBOE Market-Maker(s): After the fifteen minute notification period as described in (b)(1) below and until 3:30 pm CT on the subject trade date, where parties to the transaction are a non-broker Dealer customer and a non-CBOE Market-Maker(s), the non-broker-dealer customer may request review of the subject transaction and, the execution price of the transaction will be adjusted*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] Amendment No. 2 clarifies and revised the examples set forth in the purpose section of the filing.

*(provided the adjustment does not violate non-CBOE Market-Maker's limit price) by Trading Officials to the prices provided in Paragraphs (A) and (B) above, without the adjustment penalty, unless both parties agree to adjust the transaction to a different price or agree to bust the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error. The option contract quantity of any adjustment shall not exceed the disseminated size by the competing options exchange that has the most liquidity in that option class in the previous two calendar months.''*

*(iv)* Transactions Involving at least one non-CBOE Market-Maker: Where one of the parties to the transaction is not a CBOE Market-Maker, *and Paragraphs (a)(1)(i), (ii), or (iii) above do not apply* the transactions will be nullified by Trading Officials unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Trading Officials of the Obvious Error.

(2)–(5) No change.

(b) Procedures for Reviewing Transactions

(1) Notification: Any member or person associated with a member that believes it participated in a transaction that may be adjusted or nullified in accordance with paragraph (a) must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question, *except for the time frame set forth in Paragraphs (a)(1)(ii) or (a)(1)(iii).* Absent unusual circumstances, Trading Officials shall not grant relief under this Rule unless notification is made within the prescribed time periods. In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

(2) No change.

(c)–(e) No change.

**Interpretations and Policies * * ***

.01–.03 No change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to revise its obvious error rule (CBOE Rule 6.25). The CBOE states that the purpose of this filing is to protect non-broker-dealer customers from obvious errors during the opening rotation when they do not discover the error within 15 minutes of the execution of the erroneous transaction. The current 15-minute notification period for nullification of the transaction would not be modified. Under the proposed rule, non-broker-dealer customers would be permitted to request an obvious error review for adjustment of the transaction from Trading Officials until 3:30 pm Central Time (''CT'') on the day that the transaction occurs. The term ''Trading Officials'' means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison staff. The extent of the adjustment would depend on whether or not the party trading with the non-broker-dealer is a CBOE Market-Maker. The CBOE states that the intention of this filing is to protect the non-broker-dealer customer who fails to discover an obvious error within 15 minutes of execution from being forced to accept an execution price that results from an obvious error during the opening rotation.

For transactions during opening rotation between a non-broker-dealer customer and a CBOE Market-Maker, after 15 minutes have elapsed since the trade containing the obvious error occurred but before 3:30 pm CT on the same trading day, the non-broker-dealer customer would be able to request an obvious error review. In determining how to adjust the transaction, the Trading Official would look to the away competing exchange with the most liquidity in the option class over the two preceding months. The transaction would be adjusted to the competing exchange's disseminated price at the time the trade occurred (provided the adjustment does not violate the non-broker-dealer customer's limit price), but only up to the number of contracts that the competing exchange was listing as its disseminated size at the time the trade occurred.

For transactions during opening rotation between a non-broker-dealer and at least one non-CBOE Market-Maker, which could include (but is not limited to) an away specialist, an upstairs firm, or another non-broker-dealer customer, after the 15-minute notification period has passed but before 3:30 pm CT on the same trading day, the non-broker-dealer customer would be able to request an obvious error review. In determining how to adjust the transaction, the Trading Official would look to the away competing exchange with the most liquidity in the options class over the two preceding calendar months, but would not adjust the price beyond the non-CBOE Market-Maker's limit price, and not for a size greater than the disseminated size of the aforementioned away competing exchange.

*Example*

In a hypothetical situation, a non-broker-dealer customer (''Customer XYZ'') enters a limit order to buy 100 contracts in an options class at $3.80 prior to the opening. Assume that prior to the opening, a Market-Maker (''Market-Maker A'') was offered at $3.80 for 50 contracts and prior to the opening, a non-CBOE Market-Maker (''BD Firm ABC'') entered an order to sell 50 contracts at a price of $3.80. Now assume that the Hybrid Opening System (''HOSS'') established an opening price of $3.80 and the opening rotation is complete and Customer XYZ purchased 100 contracts at $3.80 during opening rotation.[5]

For purposes of this example, the away competing exchange with the most liquidity in the option class in the previous two calendar months is the International Securities Exchange (''ISE''). However, Customer XYZ did not check the execution status of his order until 12:30 pm CT (more than the 15 minute notification period for a nullification under Exchange Rule 6.25(b)(1)). Disseminated quote and size for the option class at ISE at the time the 100 contracts printed from the opening

[5] *See* Amendment No. 2, note 4, *supra.*

HOSS rotation on CBOE at a price of $3.80 was:

| Exchange | Bid | Offer | Size |
|---|---|---|---|
| ISE | $3.30 | $3.40 | 100 x 100 |

Because the $3.80 price is at least $.40 higher than the best offer[6] on the ISE, these trades would be obvious price errors under Exchange Rule 6.25. Pursuant to the proposed rule, 50 option contracts Customer XYZ executed against Market-Maker A would have a price adjustment to $3.40 (obvious error trades with a CBOE Market-Maker would be adjusted to the disseminated price for the disseminated size listed on the competing exchange with the most liquidity in the options class for the preceding two months (here, ISE)). The 50 option contracts executed with BD Firm ABC would execute at $3.80, because the adjustment would not exceed the non-CBOE Market-Makers limit price (here BD Firm ABC had a limit price of $3.80). The adjustment involving the transaction against the Market-Maker could occur as long as the non-broker-dealer customer reported the obvious error more than 15 minutes after the erroneous transaction occurred, but before 3:30 pm CT on the same trading day.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed rule change, as amended, will impose no 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 by the Exchange on this proposal.

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, 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–2005–63 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–2005–63. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–63 and should be submitted on or before May 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–6231 Filed 4–25–06; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53676; File No. SR–CHX–2006–08]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Specialist Participant Fees and Credits

April 18, 2006.

On February 27, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Participant Fee Schedule to confirm that, retroactive to January 1, 2006, specialist fixed fees would not be assessed to a specialist firm with respect to securities that are temporarily assigned.[3] On March 2, 2006, CHX filed

[9] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 27, 2006, the Exchange filed with the Commission a proposed rule change to amend its Participant Fee Schedule to confirm that,

Continued

Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 14, 2006.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Under the Exchange's rules, the Committee on Specialist Assignment and Evaluation (''CSAE'') is responsible for appointing participant firms to act as specialists on the Exchange.[6] From time to time, the CSAE may make a temporary assignment of one or more securities to a specialist firm.[7] Temporary assignments may be made, for example, when one specialist firm has requested and been granted the opportunity to deregister in one or more of its securities before the formal posting and assignment process has been completed.[8] Through this proposed rule change, as amended, the Exchange seeks to confirm, retroactive to January 1, 2006, that, when a firm has been appointed to act as specialist in a security on a temporary basis, the firm will not be charged the specialist fixed fees otherwise associated with the trading of that security.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act,[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that the Exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that the suspension, retroactive to January 1, 2006, of the specialist fixed fees for specialist firms who accepted a temporary assignment of securities is appropriate because it creates an incentive for a specialist firm to act as specialist on a temporary basis pending completion of the Exchange's formal process for assigning securities to a specialist.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–2006–08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–6230 Filed 4–25–06; 8:45 am]

**BILLING CODE 8010–01–P**

effective immediately, specialist fixed fees would not be assessed to a specialist firm with respect to securities that are temporarily assigned. *See* Securities Exchange Act Release No. 53429 (March 6, 2006), 71 FR 13197 (March 14, 2006).

[4] In Amendment No. 1, the Exchange revised the proposal's rule text to clarify its meaning.

[5] *See* Securities Exchange Act Release No. 53433 (March 7, 2006), 71 FR 13196.

[6] *See* Article IV, Rule 6.

[7] *See* Article XXX, Rule 1.

[8] The Exchange represents that when a security is to be assigned or reassigned, the Exchange notifies specialist firms of the assignment opportunity and invites applications for the security. *See* Article XXX, Rule 1, Interpretation and Policy .01, Section II. The Exchange further represents that if more than one firm seeks the assignment, the CSAE holds meetings with the firms to review their demonstrated ability, experience, financial responsibility and other factors that are relevant to the CSAE's assignment decision. *See* Article XXX, Rule 1, Interpretation and Policy .01, Section II and Section III. The Exchange represents that depending upon the number of firms applying for a security and the availability of committee members and specialist firm representatives, this process could take several weeks to complete. An interim temporary assignment allows a security to continue to be traded by a specialist firm, while the process is completed.

[9] 15 U.S.C. 78f(b).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53679; File No. SR–DTC–2006–05]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Centralized Billing Process Relating to the Profile Modification System in DRS

April 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 17, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC filed pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(4) thereunder so that the proposed rule change was effective upon filing with the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19(b)(4).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to provide a centralized billing process for fees related to certain transactions in the Profile Modification System (''Profile'') facility of the Direct Registration System (''DRS'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In 1996 through the efforts of a joint industry working committee, DTC (1) Established procedures for DRS that enabled an investor to transfer his securities positions registered in his name and held in book-entry form on the records of the issuer maintained by the transfer agent to his broker-dealer to be held in street name at DTC and vice versa and (2) established a new category of participants, DRS limited participants, which authorized qualifying transfer agents to use certain services of DTC related to DRS.[4] In 2000, DTC enhanced its DRS facility by implementing Profile as a feature of DRS.[5] Profile is an electronic messaging system that allows a DTC participant or a DRS limited participant (*i.e.*, a transfer agent) to send instructions to transfer investors' book-entry position from one to the other.

When a DTC participant uses Profile to send instructions to a transfer agent in order to transfer an investor's book-entry positions from the transfer agent to the broker-dealer's account at DTC, a DTC participant must enter certain identifying criteria of the investor into Profile. If the submitted identifying criteria does not match the information

[3] The Commission has modified the text of the summaries prepared by the DTC.

[4] Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[5] Securities Exchange Act Release No. 42704 (April 19, 2000), 65 FR 24242 (April 25, 2000), [File No. SR–DTC–00–04].

the DRS limited participant has on its securityholder records, the result is a ''Profile reject,'' which in many cases results in a fee being assessed by the DRS limited participant to the DTC participant. Currently these fees are assessed and collected by DRS limited participants outside of the auspices of DTC. The manual processing of these fees is a costly and labor-intensive process for both DTC participants and DRS limited participant. In order to make this process more efficient and cost effective, DTC participants and DRS limited participants have asked DTC to centralize the billing and collection process for Profile reject fees.

Accordingly, DTC proposes a centralized process for the billing and collection of such reject fees.[6] Participation in the centralized billing process will be voluntary for both DTC participants and DRS limited participants. A fee schedule for Profile reject fees will be supplied by each DRS limited participant at the time of its enrollment and can be changed by providing DTC with notice of fee changes no later than 60 calendar days prior to such change taking effect. DTC will permit only one fee increase in any 24 month period. DTC participants that join the program may elect to opt out of participating with one or more DRS limited participants at the time they enroll in the centralized billing program or at any time after enrollment. Reject fees will appear on DTC participants' monthly billing statements, and the appropriate fees will be credited to the respective DRS limited participant's account.

DTC will not take part in any dispute between a DRS limited participant and a DTC participant relating to assessed fees. If a dispute is brought to the attention of DTC and cannot be resolved by the two parties, DTC will reverse the charge in the next billing cycle,[7] and the two parties will have to work outside of the billing system and DTC to resolve the dispute. Along with the billing statements, DTC will supply to both DTC participants and DRS limited participants a full report listing each instruction that generated the reject, date of reject, and reason for the reject. To offset the cost of building and maintaining the centralized billing process, DTC will assess each DRS limited participant a fee equal to 5% of the total fees collected through the Profile centralized billing process each month for that DRS limited participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to DTC because it will promote efficiencies for DTC participants and DRS limited participants using Profile and DRS services generally.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC 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 relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by the DTC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b-4(f)(4)[10] thereunder because it is effecting a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action were necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2006–05 *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–DTC–2006–05. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, *http://www.dtcc.com.* 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–DTC–2006–05 and should be submitted on or before May 17, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–6249 Filed 4–25–06; 8:45 am]

**BILLING CODE 8010–01–P**

[6] DTC has the authority under its rules to collect from its participants fees and charges from third parties. *See* Securities Exchange Act Release No. 51870 (June 17, 2005), 70 FR 36678 (June 24, 2005) [File No. SR–DTC–2005–03].

[7] Billing cycles run for 30 days.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4).

[11] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 5393]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Henri Rousseau: Jungles in Paris''

**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 ''Henri Rousseau; Jungles in Paris,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about July 16, 2006, until on or about October 15, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 19, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–6276 Filed 4–25–06; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–55 (Sub-No. 665X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Harlan and Letcher Counties, KY

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F-*Exempt Abandonments* to abandon a 12.99-mile line of railroad on its Southern Region, Huntington Division West, Cumberland Valley Subdivision, in Harlan and Letcher Counties, KY. The line to be abandoned consists of: (1) A portion of the Poor Fork branch between milepost 0WC 261.1, near Cumberland, and milepost 0WC 262.3, at Cumberland Junction; and (2) the entire Scotia Branch between milepost 0WD 262.21, at Cumberland Junction, and milepost 0WD 274.0, near Scotia at the end of the line. The line traverses United States Postal Service Zip Codes 40823, 40862, and 40826.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 26, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 8, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 16, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT 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 May 1, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT 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 CSXT's filing of a notice of consummation by April 26, 2007, 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: April 18, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6–6064 Filed 4–25–06; 8:45 am]

**BILLING CODE 4915–01–P**

[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. Effective April 19, 2006, the filing fee for an OFA increased to $1,300. *See Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2006 Update*, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006). *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 19, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before May 26, 2006 to be assured of consideration.

**Financial Crimes Enforcement Network (FinCEN)**

*OMB Number:* 1506–0006.

*Type of Review:* Revision.

*Title:* Suspicious Activity Report by Casinos and Card Clubs.

*Form:* FinCEN form 102.

*Description:* Under 31 CFR 103.21, the Treasury is requiring casinos and card clubs with annual gaming revenue of more than $1,000,000 to report suspicious activities.

*Respondents:* Business or other for-profit; and State, Local or Tribal Government.

*Estimated Total Reporting Burden:* 30,500 hours.

*Clearance Officer:* Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Michael A. Robinson,**

*Treasury PRA Clearance Officer.*

[FR Doc. E6–6220 Filed 4–25–06; 8:45 am]

BILLING CODE 4810–02–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0353]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0353.'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0353'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certification of Lessons Completed, (Under Chapters 30, 32, and 35, Title 38, U.S.C.; Chapter 31, 110, 1606 and 1607, Title 10, U.S.C., and Section 903, Pub. L. 96–342), VA Forms 22–6553b and 22–6553b–1.

*OMB Control Number:* 2900–0353.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Students enrolled in a correspondence school complete VA Forms 22–6553b and 22–6553b–1 to report the number of correspondence course lessons completed and forward the forms to the correspondence school for certification. School official certifies the number of lessons serviced and submits the forms to VA for processing. Benefits are payable based on the data provided on the form. Benefits are not payable when students interrupt, discontinue, or complete the training. VA uses the data collected to determine the amount of benefit is payable.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2006 at pages 1792–1793.

*Affected Public:* Individuals or households, Business or other for-profit.

*Estimated Annual Burden:* 1,200 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 2,400.

*Number of Responses Annually:* 7,200.

Dated: April 18, 2006.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–6251 Filed 4–25–06; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0128]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21) this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0128.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0128'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Titles:*

a. Notice of Lapse—Government Life Insurance, VA Form 29–389.

b. Application for Reinstatement, VA Form 29–389–1.

*OMB Control Number:* 2900–0128.

*Type of Review:* Existing collection in use without an OMB control number.

*Abstract:* VA Forms 29–389 and 29–389–1 are used to inform claimants that their government life insurance has lapsed or will lapse due to non payment of premiums. The claimant must complete the application to reinstate the insurance and to elect to pay the past due premiums. VA uses the data collected to determine the claimant's eligibility for reinstatement of such insurance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 16, 2005 at page 74867.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 4,459 hours.

a. VA Form 29–389—3,399 hours.

b. VA Form 29–389–1—1,060 hours.

*Estimated Average Burden Per Respondent:*

a. VA Form 29–389—12 minutes.

b. VA Form 29–389–1—10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 23,352.

a. VA Form 29–389—16,993.

b. VA Form 29–389–1—6,359.

Dated: April 13, 2006.

By direction of the Secretary:

**Denise McLamb,**

*Program Analyst, Records Management Service.*

[FR Doc. E6–6252 Filed 4–25–06; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on May 15–16, 2006 in room 230 at the Department of Veterans Affairs 810 Vermont Avenue, NW., Washington, DC. The sessions will convene at 8 a.m. each day and adjourn at 6 p.m. on May 15 and at 3 p.m. on May 16. Sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on scientific research on Gulf War illnesses published since the last Committee meeting. Additionally, there will be presentations and discussion of background information on the Gulf War and Gulf War illnesses, application of proteomic and genomic research to the study of Gulf War illnesses, physiological mechanisms potentially underlying chronic symptoms affecting Gulf War veterans, and disucssion of committee business and activities.

Members of the public may submit written statements for the Committee's review to Dr. William J. Goldberg, Designated Federal Officer, Department of Veterans Affairs (121E), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Dr. Goldberg at (202) 254–0294.

Dated April 20, 2006.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 06–3927 Filed 4–25–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
April 26, 2006

# Part II

# Department of Commerce

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 229

## Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan Regulations; Sea Turtle Conservation; Restrictions to Fishing Activities; Final Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 229**

**[Docket No. 040903253–5337–02; I.D. 081104H]**

**RIN 0648–AR39**

# Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan Regulations; Sea Turtle Conservation; Restrictions to Fishing Activities

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement regulatory and non-regulatory management measures to reduce the incidental mortality and serious injury (bycatch) of the western North Atlantic coastal bottlenose dolphin stock (dolphin) (*Tursiops truncatus*) in the mid-Atlantic coastal gillnet fishery and eight other coastal fisheries operating within the dolphin's distributional range. This final rule also revises the large mesh size restriction under the mid-Atlantic large mesh gillnet rule for conservation of endangered and threatened sea turtles (mid-Atlantic large mesh gillnet rule) to provide consistency among Federal and state management measures. The measures contained in this final rule will implement gillnet effort reduction, gear proximity requirements, gear or gear deployment modifications, and outreach and education measures to reduce dolphin bycatch below the marine mammal stock's potential biological removal level (PBR).

**DATES:** The regulations in this final rule are effective on May 26, 2006.

**ADDRESSES:** Copies of the Final Environmental Assessment (EA), Final Regulatory Flexibility Analysis (FRFA), the Bottlenose Dolphin Take Reduction Team (BDTRT) meeting summaries, progress reports, and complete citations for all references used in this rulemaking may be obtained from the persons listed under **FOR FURTHER INFORMATION CONTACT** or online at *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm*

**FOR FURTHER INFORMATION CONTACT:** Stacey Carlson, NMFS, Southeast Region, 727–824–5312, *Stacey.Carlson@noaa.gov*; Kristy Long, NMFS, Protected Resources, 301–713–2322, *Kristy.Long@noaa.gov*; or David Gouveia, NMFS, Northeast Region, 978–281–9280, *David.Gouveia@noaa.gov*. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 10, 2004 (69 FR 65127), NMFS published a proposed rule (''the proposed rule'') to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP), amend the mid-Atlantic large mesh gillnet rule published in the **Federal Register** on December 3, 2002 (67 FR 71895), and announce the availability of a draft EA on both actions. Two public hearings and a BDTRT meeting were conducted during the 90–day public comment period. The first public hearing was held on January 5, 2005, in New Bern, NC, and the second was held in conjunction with the January 13–14, 2005, BDTRT meeting in Virginia Beach, VA. Additionally, NMFS presented information on the proposed rule at meetings with the Commonwealth of Virginia and the Mid-Atlantic Fishery Management Council, Protected Resources Sub-Committee.

The proposed rule combined two actions under different statutory authorities, to: (1) implement the BDTRP under the Marine Mammal Protection Act (MMPA); and (2) amend the Endangered Species Act (ESA) mid-Atlantic large mesh gillnet rule by extending the existing seasonally-adjusted closures to North Carolina and Virginia State waters and revise the large mesh gillnet size restriction from 8–inch (20.3 cm) stretched mesh or larger to 7–inch (17.8 cm) stretched mesh or larger. The two actions were combined under one rulemaking process because the seasonally-adjusted closures for North Carolina and Virginia State waters were originally believed necessary to not only reduce the serious injury and mortality of ESA-listed sea turtles, but also to help lower dolphin bycatch below the PBR level in those areas. The actions were also combined to provide consistency in management measures and facilitate interpretation by commercial fishermen. Further, NMFS believed that combining these measures would assist the Agency with establishing conservation management measures for all protected species under one action, regardless of under which authority the species is managed.

NMFS reviewed the public comments received during the public comment period and analyzed additional information received after the proposed rule published. As a result, NMFS is finalizing the rule, with modifications from the proposed rule. The final rule includes the proposed take reduction measures to implement the BDTRP under the MMPA and the proposed amendment to the mid-Atlantic large mesh gillnet rule under the ESA by revising the large mesh gillnet size restriction to 7–inch (17.8 cm) stretched mesh or larger, but several individual requirements were deemed unnecessary at the present time. Please see the *Comments and Responses* section for further details on the public comments received and the *Changes from the Proposed Rule* section for a summary of modifications from the proposed to final rule.

### *BDTRP under the MMPA*

Section 118(f)(1) of the MMPA (16 U.S.C. 1387(f)(1)) requires the preparation and implementation of take reduction plans (TRPs) for strategic marine mammal stocks that interact with Category I or II fisheries. The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the PBR level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA, or as depleted under the MMPA (16 U.S.C. 1362(19)). PBR, as defined by the MMPA, means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (16 U.S.C. 1362(20)). NMFS regulations at 50 CFR 229.2 define a Category I fishery as a fishery that has frequent incidental mortality and serious injury of marine mammals; a Category II fishery as a fishery that has occasional incidental mortality and serious injury of marine mammals; and a Category III fishery as a fishery that has a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals.

The western North Atlantic coastal bottlenose dolphin is a strategic stock because fishery-related incidental mortality and serious injury exceeds the stock's PBR, and it is designated as depleted under the MMPA (see 50 CFR 216.15). Because it is a strategic stock that interacts with Category I and II fisheries, a TRP is required under the

MMPA to reduce dolphin bycatch below PBR.

The short-term goal of a TRP is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the PBR established for that stock. The long-term goal of a TRP is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

The BDTRT provided NMFS with Consensus Recommendations for a BDTRP, which included both regulatory and non-regulatory conservation measures to reduce incidental mortality and serious injury of coastal bottlenose dolphins, as mandated by the MMPA. The proposed rule outlined the BDTRT's regulatory and non-regulatory recommendations, with minor modifications, to implement the BDTRP. Discussions on modifications to the BDTRT's Consensus Recommendations as well as information regarding the history of the BDTRT and BDTRP development, biology of the western North Atlantic coastal bottlenose dolphin stock, and the alternatives considered in the EA are included in the preamble to the proposed rule and are not repeated here.

To fulfill requirements of section 118 of the MMPA, regulatory and non-regulatory conservation measures are finalized herein to implement the BDTRP. Through implementation of its regulatory and non-regulatory measures, the BDTRP is designed to meet the short-term goal of a TRP, which is to reduce serious injury and mortality of coastal bottlenose dolphins within 6 months of implementation, and provide a framework for meeting the long-term goal. To determine if the short-term goal is met, NMFS will continue to monitor bycatch of dolphins through observer programs, stranded animal reports, abundance and distribution surveys, and other means. Ultimately, NMFS will evaluate the effectiveness of the TRP by monitoring the rate of serious injury and mortality of dolphins relative to the short- and long-term goals of the TRP. The BDTRP may be amended in the future to account for new information, updated data, or fishery changes.

*Geographic Scope and Fisheries Affected by the BDTRP*

The geographic scope for the BDTRP is based on the range of the western North Atlantic coastal bottlenose dolphin stock. It includes all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title). Within this overall geographic scope, seven spatial and temporal Management Units (MUs) were created based on the biological complexity of the coastal stock. These MUs are depicted in Figure 1 and include:

1. Northern Migratory MU during the summer (May 1 – October 31), which is from the New York/New Jersey border to the Virginia/North Carolina border (north of36°33′N.). In the winter (November 1 – April 30), the Northern Migratory, Northern North Carolina, and Southern North Carolina MUs overlap along the coast of North Carolina and southern Virginia and are referred to as the Winter Mixed MU;

2. Northern North Carolina MU during the summer (May 1–October 31), which ranges from the Virginia/North Carolina border to Cape Lookout, North Carolina (36°33′N. – 34°35.4′N.). In the winter (November 1 – April 30), the Northern Migratory, Northern North Carolina, and Southern North Carolina MUs overlap along the coast of North Carolina and southern Virginia and are referred to as the Winter Mixed MU;

3. Southern North Carolina MU during the summer (May 1–October 31), which ranges from Cape Lookout, North Carolina to Murrell's Inlet, South Carolina (34°35.4′N. – 33°31.2′N.). In the winter (November 1 – April 30), the Northern Migratory, Northern North Carolina, and Southern North Carolina MUs overlap along the coast of North Carolina and southern Virginia and are referred to as the Winter Mixed MU;

4. South Carolina MU during the summer (May 1 – October 31) and winter (November 1 – April 30), which ranges from Murrell's Inlet, South Carolina to the South Carolina/Georgia border (33°31.2′N. – 32°03′N.);

5. Georgia MU during the summer (May 1 – October 31) and winter (November 1 – April 30), which ranges from the Georgia/South Carolina border to the Georgia/Florida border (32°03′N. – 30°43.2′N.);

6. Northern Florida MU during the summer (May 1 – October 31) and winter (November 1 – April 30), which ranges from the Georgia/Florida border to just north of Mosquito Lagoon, Florida (30°43.2′N. – 29°23.4′N.); and

7. Central Florida MU during the summer (May 1 – October 31) and winter (November 1 – April 30), which ranges from just north of Mosquito Lagoon, Florida south along the east coast of Florida (south of 29°23.4′N.).

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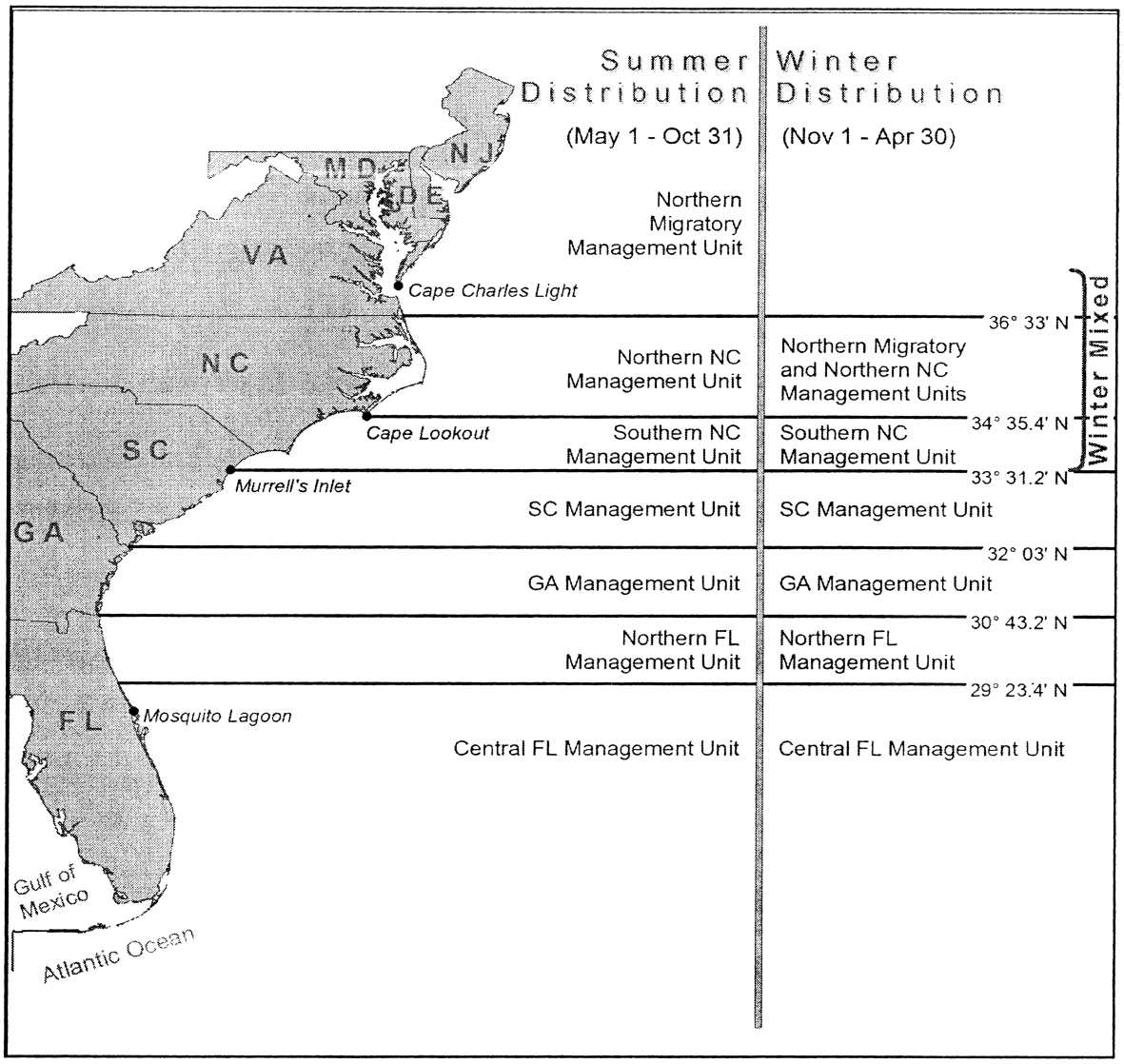
FIGURE 1: GEOGRAPHIC SCOPE AND MANAGEMENTS UNITS FOR THE BDTRP

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The management measures developed for each MU facilitate fishery management, as well as dolphin conservation, because the commercial fisheries affected by the BDTRP also have spatial and temporal components. The BDTRP affects the following Category I and II fisheries via regulatory or non-regulatory components: the mid-Atlantic coastal gillnet fishery, Virginia pound net fishery, mid-Atlantic haul/beach seine fishery, Atlantic blue crab trap/pot fishery, North Carolina inshore gillnet fishery, North Carolina roe mullet stop net fishery, North Carolina long haul seine fishery, Southeastern U.S. Atlantic shark gillnet fishery, and Southeast Atlantic gillnet fishery.

The BDTRP includes the regulatory management measures summarized in Table 1 for small, medium, and large mesh gillnets, which are organized by bottlenose dolphin MU and specific location, as well as non-regulatory conservation measures. The final rule, however, does not contain the beach gear operating requirements (beach seine, stop net, and nearshore gillnet fisheries) for North Carolina or gear marking requirements for all affected fisheries that were contained in the proposed rule.

TABLE 1: SUMMARY OF BDTRP REGULATIONS

| Fishing Area | Management Unit | Gillnet Mesh Size Requirements (Stretched Mesh) | | |
|---|---|---|---|---|
| | | Small (≤5 inch) | Medium (>5 in to <7 in) | Large (≥7 inch) |
| NJ-VA | Summer Northern Migratory | None | Jun. 1–October 31: Anchored gillnets- fishermen must remain within 0.5 nmi (0.93 km) of the closest portion of each gear fished at night in State waters, and any gear fished at night must be removed from the water and stowed on board the vessel before the vessel returns to port. | Jun. 1–October 31: Anchored gillnets- fishermen must remain within 0.5 nmi (0.93 km) of the closest portion of each gear fished at night in State waters, and any gear fished at night must be removed from the water and stowed on board the vessel before the vessel returns to port. |
| Cape Charles Light, VA to VA/NC border | Winter Mixed - Virginia | None | None | November 1–December 31: No fishing at night in State waters, and, at night, gear must be removed from the water and stowed on board the vessel. |
| VA/NC border to Cape Lookout, NC | Summer Northern North Carolina AND Winter Mixed Northern North Carolina | May 1–October 31: In State waters, net length must be less than or equal to 1,000 feet (304.8 m). | November 1–April 30: No fishing at night in State waters; sunset clause of 3 years for this restriction. | April 15–December 15: No fishing in State waters[1]; December 16–April 14: No fishing at night in State waters without tie-downs. |
| Cape Lookout, NC to the North Carolina/South Carolina Border[2] | Summer Southern North Carolina AND Winter Mixed - Southern North Carolina | None | November 1–April 30: No fishing at night in State waters; sunset clause of 3 years for this restriction. | April 15–December 15: No fishing in State waters[1]; December 16–April 14: No fishing at night in State waters and, at night, gear must be removed from the water and stowed on board the vessel. |
| SC, GA, and FL | South Carolina, Georgia, Northern Florida, and Central Florida | | Year-round for all gillnet gear: Fishermen must remain within 0.25 nautical mile (0.46 km) of the closest portion of their gear at all times in State and Federal waters within 14.6 nautical miles (27 km) from shore. Gear must be removed from the water and stowed on board the vessel before the vessel returns to port. | |

[1] The dates for the large mesh prohibition codify current North Carolina state regulations, and therefore, slightly deviate from the BDTRP summer and winter dates in which other regulatory measures are applied.

[2] These prohibitions stop at the North Carolina/South Carolina border rather than extending to Murrels Inlet, South Carolina as defined by the Southern North Carolina MU because gillnet fishing activity is limited in South Carolina.

*Non-Regulatory Elements of the BDTRP*

The BDTRT noted that effective implementation of the BDTRP requires continued research and monitoring, enforcement of regulations, outreach to fishermen, and a collaborative effort with states to remove derelict crab trap/pot gear. Therefore, the BDTRT referred to these as the non-regulatory elements of the BDTRP and included them in their Consensus Recommendations to NMFS. NMFS agrees that the non-regulatory elements are important in achieving both the short- and long-term goals of the BDTRP and considers all non-regulatory elements as part of the Agency's final BDTRP (see the EA for additional information on non-regulatory recommendations).

Continued research and monitoring are necessary components of a TRP to ensure that the best available information continues to drive management decisions and to evaluate the effectiveness of the TRP. The following are general research and monitoring efforts that will be integral components of the BDTRP: (1) continued research on bottlenose dolphin stock structure; (2) design and execution of scientific surveys to provide reliable abundance estimates of the bottlenose dolphin stock; (3) review of available information on bottlenose dolphin stock size and structure to determine whether its depleted status under the MMPA has changed; (4) improved assessment of bottlenose dolphin serious injury and mortality by expanding observer coverage and improving the precision of serious injury and mortality estimates, expanding stranding networks to enhance data collection efforts, assessing the factors contributing to bottlenose dolphin serious injury and mortality, providing better assessment of fishery effort, and exploring alternative methods of monitoring serious injury and mortality; and (5) completion of various ongoing gear-modification-related research projects (i.e., comparing behavior of captive and wild dolphins around gillnets with and without acoustically reflective webbing, and investigating the effects of twine stiffness on dolphin serious injury and mortality).

The observer program and the Marine Mammal Stranding Network are vital programs for monitoring the effectiveness of the BDTRP and evaluating the plan's success at meeting the short- and long-term goals of the MMPA. NMFS intends to support both these programs by: (1) enhancing

current observer programs and coordinating with other states and researchers to provide statistically viable sample sizes for all fisheries interacting with dolphins; (2) implementing alternative monitoring programs (i.e., non-fishing vessel based observation platforms); (3) establishing dedicated beach surveys and employing observers in geographic areas and time frames during which observer coverage is currently lacking; (4) increasing stranding coverage and improving training for network participants; (5) improving post-mortem assessments to better determine sources of mortality; and (6) providing funding to organize and conduct workshops and training sessions to help foster communication between the observer program and stranding network, and assembling the information and staff necessary to accomplish these objectives.

Consistent enforcement is necessary to ensure the success of the BDTRP. NMFS will work to establish appropriate levels of enforcement of the BDTRP. NMFS enforcement agents will continue to participate in the BDTRT process to ensure implementation needs continue to be met.

NMFS will also formally request that Federal, state, and local fishery enforcement agents monitor inside waterways for serious injury and mortality of dolphins and fishery/human interactions to help enhance the stranding network and monitor for compliance of the BDTRP. Additionally, NMFS will provide training to agents on all aspects of the BDTRP, including how to respond to and assist with marine mammal strandings.

Therefore, this training will: (1) review all regulatory components of the BDTRP; (2) discuss the agent's role in stranding response and in educating fishermen and the public; (3) include training materials similar to those provided to fishermen; and (4) be conducted at regional law enforcement meetings.

Another necessary component of the BDTRP is to ensure that affected commercial fishermen understand the regulatory and non-regulatory elements of the plan and how they apply to each fishery and fishing area. Therefore, NMFS will conduct workshops and dockside visits to: (1) inform fishermen of new and existing regulations to reduce serious injury and mortality in their fisheries, as well as potential gear modifications developed via gear research; (2) supply contact information and protocols for responding to dolphin/fishery interactions or strandings; and (3) encourage best fishing practices to reduce serious injury and mortality. NMFS Fishery Liaisons intend to conduct these workshops and dockside visits in major ports from New Jersey through Florida. Pertinent information for commercial fishermen will also be available on NMFS' website.

The final non-regulatory element included in the BDTRP is for NMFS to encourage states to develop and implement a program to remove derelict blue crab traps/pots and associated lines. This program will help reduce impacts of the large blue crab fishery that exists throughout the coastal bottlenose dolphin's range. NMFS will continue to support state efforts in removing derelict crab traps/pots and will work with state partners and other stakeholders to develop such programs in states that currently do not actively remove derelict crab traps/pots.

NMFS will conduct an outreach program to encourage use of voluntary gear modifications in the crab trap/pot fishery. Modifications may include: (1) using sinking or negatively buoyant line; (2) limiting the line to the minimum length necessary; and (3) using inverted or modified bait wells for those areas where dolphins are tipping traps and stealing bait. NMFS recently funded a pilot project to determine if dolphins interact differently with blue crab traps/pots built with inverted or recessed opening bait wells versus blue crab traps/pots built with bottom opening bait wells. The results of this study will determine if these modified bait wells are feasible for use by the fishery and will sufficiently reduce bottlenose dolphin bycatch. NMFS also recently funded a study to examine the role of the buoy line in dolphin entanglements in the crab trap/pot fishery.

*Revision to Large Mesh Gillnet Size Restriction in the Mid-Atlantic Large Mesh Gillnet Rule under the ESA*

The purposes of the ESA, as stated in section 2(b), are to provide a means whereby the ecosystems upon which endangered or threatened species depend may be conserved; to provide a program for the conservation of such endangered or threatened species; and to take such steps as may be appropriate to achieve the treaties and conventions set forth in the ESA. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific Coast of Mexico and olive ridleys from the Pacific Coast of Mexico, which are listed as endangered.

To protect migrating sea turtles, NMFS published a final rule on December 3, 2002 (67 FR 71895), establishing seasonally-adjusted gear restrictions by closing portions of the mid-Atlantic exclusive economic zone (EEZ) to fishing with gillnets with a mesh size larger than 8–inch (20.3–cm) stretched mesh. In this final rule, NMFS is revising the large mesh size restriction from the current greater than 8–inch (20.3–cm) stretched mesh, as defined in the 2002 final rule, to 7–inch (17.8–cm) stretched mesh or greater.

Information regarding the history of the current mid-Atlantic large mesh gillnet rule and justification for its enactment were provided in the proposed rule (69 FR 65127) and are not repeated here.

**Comments and Responses**

NMFS received 4,140 public comments on the draft EA and proposed rule via letter, fax, E-mail, or participation at public hearings. Approximately, 4,085 letters of similar content were received via E-mail. NMFS received various petitions that expressed concern over certain topics in the proposed rule. Although each petition was counted as only one comment, the number of signatures on each petition was noted. NMFS also received 2 comments in support of various parts of the proposed rule.

Comments on the proposed rule were received from the States of North Carolina, Virginia, Georgia, and Maryland; Virginia state and local representatives from Accomack County, Chincoteague, and the House of Delegates, 100th District for Richmond; the mid-Atlantic Fishery Management Council; the South Atlantic Fishery Management Council; the North Carolina Marine Fishery Commission; the United States Coast Guard; conservation organizations, including the Ocean Conservancy, Oceana, and the Center for Biological Diversity; fishermen's organizations, including the Eastern Shore Watermen's Workers Association, the Garden State Seafood Association, and the Carteret County Fishermen's Association; Duke University; the BDTRT; and 35 individual commenters. Five petitions with a total of 563 signatures were received, representing commercial fishermen in Maryland, North Carolina, and Virginia, and numerous fishermen in North Carolina, including inshore

gillnet, runaround or strike gillnet, and beach seine fishermen.

The comments are summarized and grouped below by major subject headings. NMFS' response follows each comment.

*Comments Regarding Proposed Regulatory Measures not Implemented in This Final Rule*

NMFS received numerous comments on the proposed beach gear operating requirements and gear marking requirements under the BDTRP, and the seasonally-adjusted closures proposed under the mid-Atlantic large mesh gillnet rule to be extended into North Carolina and Virginia State waters. NMFS carefully reviewed and analyzed all comments and is not finalizing these three proposed regulatory measures in the final rule. The following comments and responses explain NMFS' decision not to finalize these proposed regulatory measures.

*Comment 1:* NMFS received 45 comments, including 302 petition signatures, regarding various aspects of the proposed beach gear (beach seine, stop net, and nearshore gillnet fisheries) operating requirements. Comments included: (1) concerns that decreasing mesh size in the roe mullet stop net fishery will cause bycatch of non-target species and undermine the compromise reached with pier owners in the early 1990's; (2) recommendations to increase observer coverage in the stop net fishery to further document entanglements of bottlenose dolphins and re-evaluate the need for regulating this fishery; (3) claims that the proposed beach gear operating requirements unintentionally included nearshore gillnets without justification and in contravention of the BDTRT's intent not to regulate this fishery; (4) petitions requesting exemptions for the beach anchored and nearshore gillnet fisheries; (5) questions regarding why the use of multifilament vs. monofilament webbing is proposed; and (6) concerns that multifilament webbing, as opposed to monofilament, will increase bycatch of bottlenose dolphins and juvenile and non-target species. BDTRT comments also recommended how to amend the proposed beach gear operating requirements in 50 CFR 229.35(e)(3)(i)(A) of the proposed rule to more accurately reflect the intent of BDTRT's 2002 and 2003 Consensus Recommendations. The proposed beach gear operating requirements stated that gillnet gear or seine gear within the first 300–feet (91.4 m) of the beach/water interface must be constructed of multi-fiber nylon that is 4–inches (10.2 cm) or less stretched mesh, and nets consisting of monofilament material would be prohibited in this area.

*Response:* NMFS is not finalizing the proposed beach gear operating measures at this time because: (1) the proposed measures for beach gear would inadvertently impact nearshore gillnet and other commercial fishermen that were not intended to be regulated by the BDTRT Consensus Recommendations; (2) a review of the most recent serious injury and mortality estimates provided by Palka and Rossman (2005) suggests that the proposed measures for beach gear are not currently necessary to reduce bottlenose dolphin serious injury and mortality to below PBR; and (3) NMFS believes additional information is necessary regarding the level of serious injury and mortality in both beach gear and nearshore gillnet fisheries and possible measures to reduce this serious injury and mortality.

NMFS is pursuing the following activities to further investigate appropriate measures to address beach gear and nearshore gillnet fisheries in the future.

(1) Research in the stop net fishery to compare bycatch rates of dolphin, fish and other marine species in current and proposed net configurations. NMFS funded a study that will be conducted during the 2005 fall stop net fishery season to accomplish this goal;

(2) Collection of additional information regarding the operation and level of effort in beach-based and nearshore gillnet fisheries and how these influence serious injury and mortality estimates. In North Carolina, many commercial fishermen appear to use gillnets in the same manner as beach seines but record their landings in the traditional beach seine fishery in the North Carolina Department of Marine Fisheries (NCDMF) Trip Ticket Program. This may negatively or positively bias the bycatch estimates for the nearshore gillnet and beach seine fisheries. This distinction is important to ensure management measures appropriately address the fisheries in which bycatch occurs. Therefore, NMFS will explore options under the List of Fisheries process in conjunction with NCDMF to identify these fisheries separately, as well as pursue outreach to commercial fishermen to improve the accuracy of recorded trip data. Additionally, NMFS plans to hire a field coordinator to collect demographic information from commercial fishermen in the mid-Atlantic, which will more readily distinguish effort in the beach-based and nearshore gillnet fisheries; and

(3) Collection of demographic data for the nearshore gillnet fisheries in the mid-Atlantic to help determine if bycatch reduction measures are necessary in nearshore gillnet fisheries. NMFS has difficulty maintaining representative observer coverage in the nearshore gillnet fishery because traditional methods used by the observer program to schedule trips are often not effective in North Carolina and, to a lesser extent, in Virginia. One difficulty arises because some of the fishermen who participate in the gillnet fishery in North Carolina use small vessels (less than 24 ft or 7.3 m) that cannot safely accommodate observers because of the boat's configuration. Additionally, fishermen often launch from private and public ramps rather than from established marinas or fishing ports, hindering an observer's ability to locate and request coverage of a gillnet trip. The demographic data collected by the field coordinator will help to identify where fishermen are launching their vessels, the size of their vessel, where they are fishing, gear type used, and species targeted, etc. These data will help: (a) NMFS determine the percentage of North Carolina gillnet fishermen who cannot be observed by traditional means based on boat size and for whom alternative vessel-based observation is necessary; (b) provide better contact information for the observer program to facilitate contacting fishermen to schedule trips; and (c) improve representative observer coverage in the nearshore gillnet fishery, thereby increasing the precision of bycatch estimates and determining the need for bycatch reduction measures.

When additional information is available, NMFS will re-evaluate all comments received regarding the proposed beach gear operating requirements and, in consultation with the BDTRT, develop bycatch reduction measures for these fisheries. If rulemaking is deemed necessary and pursued for these fisheries in the future, NMFS will consider these public comments in the development of management measures.

*Comment 2:* NMFS received 46 comments regarding various aspects of the proposal to extend the existing large mesh gillnet seasonally-adjusted closures into North Carolina and Virginia State waters under the ESA-based mid-Atlantic large mesh gillnet rule. Comments included both support for, and opposition to, the proposal. Other specific comments included: (1) requesting more information or additional research on sea turtle life history and distribution to better understand the appropriateness of the closures; (2) concerns about economic impacts, especially on fisheries with limited evidence of sea turtle

interactions, such as the striped bass and black drum gillnet fisheries; (3) concerns about combining ESA and MMPA regulatory processes; (4) claims that revising the large mesh gillnet size restriction to 7–inches (17.8–cm) or greater stretched mesh will cause increased finfish bycatch; and (5) requests for fishery exemptions beyond those proposed, based on economic impacts, specific fishery practices, or low observed bycatch rates.

*Response:* Under the ESA-based mid-Atlantic large mesh gillnet rule, NMFS is not finalizing the proposed extension of the existing large mesh gillnet seasonally-adjusted closures into State waters at this time. When the proposed rule was published, NMFS believed extending the existing closures would reduce the potential for incidental capture of sea turtles in state-managed, large mesh gillnet fisheries, as well as provide necessary conservation benefits for bottlenose dolphins. Following publication of the proposed rule, NMFS received additional information from the states of Virginia and North Carolina on the status and trends of effort in their gillnet fisheries, as well as recent and upcoming state fishery management measures not previously considered by NMFS.

Changes to the Federal monkfish fishery resulted in a number of North Carolina gillnetters obtaining permits to operate in Federal waters instead of being limited to State waters. Thus, NMFS expects that fishing in North Carolina State waters may decrease. Additionally, NCDMF began developing state management measures for large mesh gillnet fisheries that will provide protection to sea turtles similar to the proposed Federally-imposed closures of State waters. The Virginia Marine Resources Commission (VMRC) provided data showing that the state quota tag system implemented following the drafting of the proposed rule reduced striped bass large mesh gillnetting effort by approximately 70 percent. Additionally, following publication of the proposed rule, VMRC implemented regulations to further manage large mesh gillnets in State waters and to eliminate monkfish gillnetting, the fishery of primary concern in terms of sea turtle bycatch.

Therefore, upon review and analysis of the new information, NMFS determined that it is not currently necessary to extend the Federal closures into State waters, as the Federal regulations would be redundant to the newly developing state regulations without added conservation benefits. Furthermore, additional analysis was conducted that included updated state management measures, which indicated that the extension of the seasonally-adjusted closures as proposed was not necessary to reduce bycatch of dolphins to below PBR (Palka and Rossman, 2005).

Many of the comments, including those regarding economic and procedural concerns and exemption requests are no longer pertinent because the extension of the seasonally-adjusted closures into State waters is not being implemented. Additional research and data collection related to sea turtle life history, seasonal distribution, and sea turtle bycatch estimates are ongoing priorities for NMFS. Additional information is also contained in the responses to Comments 43 and 44. NMFS and the states will continue to monitor and evaluate the fisheries. If deemed necessary based on future information, including changes in the state fisheries or state management of the fisheries, NMFS will take appropriate actions to ensure adequate sea turtle conservation measures are in place.

Under this final action, NMFS will amend the mid-Atlantic large mesh gillnet rule (67 FR 71895) as proposed to revise the large mesh gillnet size restriction to include gillnets with a stretched mesh of 7 inches (17.8 cm) or greater, instead of the current limitation of greater than 8–inches stretched mesh (20.3 cm). Some comments expressed concern that this measure would require fisheries to change the mesh sizes used to below 7 inches (17.8 cm), and potentially increase finfish bycatch. However, commercial fishermen will not need to change their gillnet mesh size as a result of the revision. The revision does not mandate a change in gear for any fishery. Rather, this measure involves a nomenclature change, i.e., the size of mesh used that constitutes large mesh nets for purposes of the regulation. Additionally, based upon review of information on state and Federal fisheries, the revision will not bring any new fisheries under the regulations, as no fisheries currently use standard gear from 7 inch (17.8 cm) to 8 inch (20.3 cm) stretched mesh. This final action will merely align the existing Federal large mesh gillnet regulation with other state and Federal management definitions of ''large mesh gillnets,'' including that in the BDTRP. Furthermore, since the Federal seasonally-adjusted closure will not be extended into State waters, there is no practical impact to any state fisheries from this terminology clarification.

*Comment 3:* NMFS received approximately 30 comments and a petition with 113 signatures regarding various aspects of the proposed gear marking requirements in § 229.35(d)(1) and (2) of the proposed rule. Comments included: (1) claims that using 3–foot (0.91 m) flags on the ends of gillnets in shallow waters is not feasible; (2) assertions that identification tags will foul gear; (3) questions regarding the rationale for requiring identification tags every 100 feet (304.8 m) and using 3–foot flags (0.91 m) on the ends of gillnets in shallow waters; (4) concerns that the proposed gear marking requirements will create potential conflicts with current state gear marking requirements, as well as be redundant and overly burdensome; (5) requests to exclude gear marking requirements from exempted waters; (6) petitions requesting exemptions to the gear marking requirements for North Carolina beach seine fishermen; (7) concerns about the cost associated with the proposed gear marking requirements; and (8) recommendations for more feasible gear marking options. Recommendations were also received from the BDTRT during the public comment period on how to amend the gear marking requirements to address some of these concerns.

*Response:* The BDTRT recommended gear marking requirements primarily to aid in enforcement of time and area restrictions on gear types and tending requirements. A secondary objective was to allow for a better means to identify gear found on stranded or entangled dolphins and linking that gear back to a specific fishery to ensure that BDTRP regulations are applied accordingly.

After reviewing all received comments and recommendations and re-evaluating current gear marking requirements in each state affected by the BDTRP, NMFS determined that current state gear marking requirements are meeting the primary purpose for proposing the gear marking requirements. Although the states' gear marking requirements will not accomplish the secondary purpose for proposing the gear marking requirements, namely, requiring identification tags every 300 feet (91.4 m) along the floatline of Category I and II fishery nets to facilitate monitoring, NMFS does not believe it is necessary to duplicate gear marking requirements at this time. Duplicating gear marking will unnecessarily burden commercial fishermen and create confusion between state and Federal requirements. Bycatch objectives will still be met without finalizing these requirements because gear marking requirements would not directly reduce bycatch of bottlenose dolphins.

Each state affected by the BDTRP requires either a buoy and/or flag to be attached to the floatline of gillnets or crab traps/pots, or at the ends of gillnets and crab traps/pots, with a form of identification inscribed on the buoy or float. Some states also require these flags or buoys be of specific dimensions and color. Georgia is the only state that does not require gear marking, but they also prohibit the use of gillnets within State waters.

NMFS will continue to monitor the status of each state's gear marking requirements to ensure they continue to meet the objectives of the BDTRP. Additionally, NMFS recently funded a study to evaluate various forms of identification tags along the floatline of gillnets to assess their practicality. The objectives of the study were to deploy 6 different gear and identification tag markings, test each for longevity, and quantify burden and monetary costs of maintaining each under normal field operations (Hager, 2005). This and future studies will help to identify more effective and practical means of marking gear.

*Comments in Support of the Rule*

*Comment 4:* Over 4,000 letters of similar content urged NMFS to finalize all proposed regulations as soon as possible and supported inclusion of the proposed seasonally-adjusted closures in North Carolina and Virginia State waters for sea turtle protection.

*Response:* NMFS is working expeditiously to finalize the regulations. However, the seasonally-adjusted closures for North Carolina and Virginia State waters, proposed as an amendment to the mid-Atlantic large mesh gillnet rule, were deemed unnecessary upon analysis of additional information and are not contained in this final rule (see Comment 2).

*Comment 5:* One commenter applauded NMFS for proposing to take a holistic view of commercial fisheries by combining the two proposed rules (BDTRP and amendments to the mid-Atlantic large mesh gillnet rule) to benefit protected species, which would streamline the regulatory structure for the affected commercial fishermen. The commenter supports NMFS' continued efforts in taking a holistic approach, including providing the TRT with the best available sea turtle data and access to sea turtle experts in order to assist them in their deliberations.

*Response:* NMFS agrees and will continue to work towards a holistic management approach, where possible, that will benefit all protected species while minimally impacting commercial fishermen. The Agency will also invite knowledgeable protected species experts to attend future BDTRT meetings and other TRT meetings as necessary.

*Comment 6:* One commenter concurred with the proposed recommendations for crab trap/pot-related non-regulatory actions. The commenter also agreed that additional gear marking requirements for the Atlantic Blue Crab Pot/Trap fishery are not necessary.

*Response:* NMFS recognizes the importance of non-regulatory measures for the crab trap/pot fishery. This fishery is known to incidentally take bottlenose dolphins but is a difficult fishery to formally observe. In 2004, NMFS provided funds for a study to investigate the effectiveness of using inverted crab trap/pot wells to prevent dolphins from tipping pots and entangling in the gear. Additionally, in 2005, NMFS provided funds for a study to examine the behavior of crab trap/pot buoy lines in the water with respect to various factors, such as water depth. The results will help NMFS and the BDTRT determine whether modifications to existing gear practices are necessary to reduce the potential for dolphin entanglement.

*Comment 7:* One commenter agreed with the proposed requirement for the Southeastern U.S. Atlantic shark gillnet fishery stating that NMFS should allow the fishery to continue in the EEZ and that gear should be removed from the water and stowed onboard the vessel before the vessel returns to port. The commenter noted the difficulty in enforcing the 0.25 nautical mile (0.46 km) proximity requirement but supported the requirement in absence of other bycatch reduction measures. The commenter also agreed with the gear marking requirements as proposed.

*Response:* NMFS generally agrees with the commenter. However, after review of the states' current gear marking requirements, NMFS believes finalizing additional gear marking requirements are redundant and not necessary (see Comment 3).

*Comments in Opposition to the Rule*

*Comment 8:* One commenter noted that NMFS maintains the authority to implement additional, more conservative measures than those recommended by the BDTRT, in order to meet the statutory requirements of the MMPA. However, there is no reason to deviate from the BDTRT's recommendations by decreasing conservation protection measures, which is the case by not implementing the recommendation for mandatory bycatch certification training or for small mesh fisheries in North Carolina to haul their gear once every 24–hours.

*Response:* When assessing the BDTRT's Consensus Recommendations, NMFS analyzed if the measures would reduce the bycatch of coastal bottlenose dolphins to below PBR under the MMPA and if they were feasible to enforce and implement without undue burden on the commercial fishermen and the Agency. NMFS also considered whether the Agency would have the ability to monitor and evaluate the effectiveness of the management measures implemented.

Regarding the two examples mentioned above, NMFS recognizes the importance of bycatch certification training for affected commercial fishermen, which is why workshops and dockside visits are included as non-regulatory measures in the BDTRP. However, NMFS determined that a mandatory bycatch certification program is not warranted at this time because of the immense effort required to ensure that all active commercial fishermen participate in the workshops. Instead of a mandatory bycatch certification program, NMFS will focus on outreach and education measures for the affected fishing industry. These measures include: (1) voluntary workshops conducted at major ports along the east coast of the United States to inform commercial fishermen about the requirements of the BDTRP; (2) dockside visits conducted by Fishery Liaisons; (3) a website dedicated to BDTRP-related information; and (4) educational materials (i.e., brochures, placards, decals, etc.) distributed by mail to all affected commercial fishermen. NMFS believes that conducting these various voluntary outreach and education opportunities, rather than mandatory certification training, will facilitate participation and understanding of the BDTRP and provide more educational opportunities for affected commercial fishermen.

NMFS did not support the requirement to haul small mesh gear once every 24 hours in the Winter Mixed and Summer Northern North Carolina MUs because fishery data revealed that 98 percent of the observed hauls soaked for less than 24 hours. This measure would also be difficult to enforce because it would be difficult to accurately ascertain the length of time the gear was in the water and if it was actually hauled once during the 24–hour period, unless enforcement agents monitored the gear for the 24–hour period. Therefore, it was determined that the minimal potential benefits would be far outweighed by the

potential costs related to monitoring and enforcing the restrictions.

*Comment 9:* One commenter stated that the combination of the proposed actions into one proposed rule to implement the BDTRP and amend the mid-Atlantic Large Mesh Gillnet rule alters the recommendations for the BDTRP, as agreed to by the BDTRT. It also creates confusion as to which rule should be followed and why.

*Response:* NMFS acknowledges that combining the proposed actions created some confusion, and this final rule attempts to clarify the regulatory requirements for each action. NMFS disagrees that the combination of the proposed rules altered the BDTRT's recommendations. As noted in the response to Comment 5, NMFS was working towards a holistic management approach by combining these two actions, as the BDTRT noted in their team deliberations that the extension of the mid-Atlantic large mesh gillnet rule into North Carolina State waters would provide conservation benefits for dolphins in this area. Also noted in Comment 2, the amendments to the mid-Atlantic large mesh gillnet rule to include seasonally-adjusted closures in North Carolina and Virginia State waters were deemed unnecessary after review of additional information and are not finalized herein.

*Comment 10:* NMFS inappropriately allowed members of the BDTRT to discuss altering ESA regulations. ESA regulations for sea turtles cannot be altered unless they have undergone an ESA section 7 consultation, and NMFS should not have allowed a stakeholder team to craft exemptions for particular fisheries without benefit of scientific evidence on how those exemptions might alter bycatch of listed sea turtles.

*Response:* As noted in Comment 2, the amendments to the mid-Atlantic large mesh gillnet rule to include seasonally-adjusted closures in North Carolina and Virginia State waters, including the striped bass exemptions, are not included in this final rulemaking. These proposed amendments were developed separately from the BDTRT process, and the requirements under the ESA were not altered by the BDTRT recommendations nor did NMFS delegate ESA authority to the BDTRT. The BDTRT discussed how amendments to the mid-Atlantic large mesh rule, specifically extending the seasonally-adjusted closures into North Carolina State waters, would contribute to dolphin conservation in that MU and made recommendations to include this conservation benefit in their Consensus Recommendations. The BDTRT recognized that including this amendment might have an incidental impact on the striped bass fishery, and therefore, recommended an exemption for this fishery. However, the need for this proposed exemption was also identified by NMFS staff working on the sea turtle conservation measures.

NMFS recognized that combining the two actions, the BDTRP and the amendments to the mid-Atlantic large mesh gillnet rule, into one proposed and final rule package would allow the agency to work towards a holistic management approach that would benefit all protected species, while providing consistency in management. A section 7 consultation under the EPA is required for all Federal actions. Consultation was completed for both the proposed and final rule (see Comment 65).

*Comments Related to the BDTRT*

*Comment 11:* One commenter stated that the BDTRT should allow for adaptive management and be reconvened in the event that there are changes in fishing effort.*Response:* NMFS agrees and will reconvene the BDTRT on a regular basis, as mandated by the MMPA.

*Comments Related to Collaboration/ Cooperation*

*Comment 12:* One commenter requested that NMFS consider acknowledging or exempting licensed or unlicensed legal gillnet research activities that may occur in State waters.

*Response:* NMFS agrees that some gear research activities should be exempt to allow for continued development of gear modifications. Exemptions for gear research are not included in this final rule to implement the BDTRP but may be included in future amendments to the BDTRP. Exemptions for research activities in State waters will be closely coordinated with state resource management agencies.

*Comment 13:* One commenter stated that NMFS should work more closely with all the state gillnet fisheries throughout the Mid-Atlantic region to significantly reduce sea turtle mortality.

*Response:* NMFS understands the importance and value of collaborative efforts with state agencies for the development of management measures. NMFS has been working and will continue to work cooperatively with VMRC and NCDMF to reduce sea turtle mortality in State waters. Specifically, NMFS worked closely with NCDMF and VMRC regarding the proposal to extend the seasonally-adjusted large mesh gillnet closures into State waters as a sea turtle conservation measure. As a result, new information not previously considered on the status and trends of the state gillnet fisheries was incorporated into the analyses. The cooperation between NMFS and the states also led VMRC to enact new gillnet fishery regulations and NCDMF to draft management measures for regulating gillnet fisheries, which will be implemented in the upcoming months. As a result of the new information, analyses, and developments that arose from the cooperation between NMFS and state agencies, it was determined that the proposed measures regarding seasonally-adjusted closures would not provide additional conservation benefit to sea turtles in North Carolina and Virginia State waters (see also Comment 2). Furthermore, through its Strategy for Sea Turtle Conservation and Recovery in relation to Atlantic and Gulf of Mexico Fisheries, NMFS is examining sea turtle interactions with fishing gear throughout the Atlantic coast.

*Comment 14:* One commenter urged NMFS to work with the states to find an equitable solution to conserve protected resources while making allowances for people who, in an economically disadvantaged area, seek to make a living working on the water.

*Response:* As noted in Comment 13, NMFS understands the importance and value of working cooperatively with state representatives to develop and implement management measures for protected species. In developing this final rule, NMFS worked cooperatively with several states to ensure sea turtles were not incidentally taken in commercial fisheries, while considering the economics of the fishery for specific areas. NMFS also worked with state representatives from New York, New Jersey, Maryland, Delaware, Virginia, North and South Carolina, Georgia, and Florida, as well as all active BDTRT members on bottlenose dolphin conservation measures. State representation on the TRT provides an opportunity for state agencies to bring to light specific issues of economic hardship that may arise from proposed management actions. Such issues are taken into consideration during the TRP process to help ensure that management measures are not placing undue economic hardship on fisheries, while still providing the resource protections mandated by the MMPA and other Federal laws. More in depth economic analyses are then considered in the EA.

NMFS also carefully reviews and considers any comments from state agencies during the proposed rule process. Based on comments received from the states, and others, NMFS is

modifying the final rule to: (1) omit the gear marking requirements because all the states affected by the BDTRP currently maintain their own gear marking requirements (see Comment 3); and (2) omit the beach gear operating requirements and conduct additional research on the North Carolina roe mullet stop net fishery (see Comment 1). Accounting for management measures the states already have in place and modifying the final rule accordingly reduces any additional economic hardship on commercial fisheries.

*Economic Analysis*

*Comment 15:* The prohibition of monofilament webbing 300 feet (91.4 m) from the beach/water interface was not a recommendation of the BDTRT but was proposed by NMFS. It is not clear that NMFS fully evaluated the economic impacts to all the commercial fisheries that would be impacted by this proposed measure, including North Carolina roe mullet stop net, striped bass, striped mullet, spot, croaker, etc.

*Response:* Review of the analyses of impacts of this proposed measure indicate that they indeed captured the impacts on those fisheries characterized as unintentionally impacted. However, as discussed in Comment 1, the beach gear operating requirements are not contained in this final rule.

*Comment 16:* The economic analysis does not contain information regarding the conditional exemption of the Virginia striped bass fishery and potential loss this will cause. The conditional exemption stipulates fishing practices that are not common to Virginia.

*Response:* As described in the draft EA, due to data limitations, large mesh fishing activity was identified based on species landed as reported in the trip ticket information. Striped bass dominated the large mesh gillnet trips in Virginia, accounting for 97 percent of the trips and harvests. Thus, the analysis concluded that a striped bass exemption would eliminate almost all negative impacts associated with this measure because 97 percent of the trips in Virginia were classified as large mesh gillnets harvesting striped bass. Because the proposed striped bass exemption did not reflect current fishing practices in Virginia, the economic analysis concluded that the estimated impacts for the proposed exemption were almost equal to the impacts if no striped bass exemption were proposed. However, the proposed seasonally-adjusted closures in which the striped bass fishery was offered an exemption is not finalized herein (see Comment 2). Therefore, there are no associated economic impacts.

*Comment 17:* There were some misleading statements about the economic loss in Virginia from the amendments to the mid-Atlantic large mesh gillnet rule by including the entire gillnet fishery in the revenue loss. Additionally, the 2002 data set used for economic analyses presents potential bias, as the Virginia catch, seaward of the COLREGS line, for 2002 was 20 percent less than 2001 and 2003 catches.

*Response:* The economic impact analysis of a regulatory action requires an examination of both the impact of the action on the economic performance of an entity in the specific fishery regulated, as well as the impact on the overall ability of the entity to continue operation as a commercial fishing entity. Thus, it is necessary to examine revenues from the specific sector being regulated; for instance, large mesh gillnet fishing, as well as all other gears fishermen use over the course of the entire year. While economic behavior in a given fishery or gear sector may be significantly impacted by a regulation, operation in that sector may not be significant relative to overall fishing activity due to diversification into multiple fisheries.

The data set used for the analysis encompassed portions of 2000 and 2001. It is recognized that variability in harvests occurs from year to year. However, the data set used was selected to be consistent with the biological analysis on which the required take reductions were based.

Additionally, NMFS is not finalizing the proposed extension of the existing large mesh gillnet seasonally-adjusted closures into State waters at this time. Therefore, the economic impacts evaluated for that proposed action will not occur.

*Comment 18:* Two commenters addressed the economic analysis in general stating that it was the last thing to be examined, and the economic impact analyses for small entities were flawed.

*Response:* The economic analysis was initiated and conducted upon development of the alternatives, as directed by the applicable law. NMFS did not select the alternatives contained in the final rule until all economic analyses were complete and public comments reviewed. The final rule, therefore, reflects consideration of both the economic analysis and public comments received on potential impacts of the proposed rule. Consistent with public comment, the economic analysis concluded that, while the rule was not expected to have an overall significant impact on a substantial number of small entities, certain measures were projected to significantly affect some individual participants and sub-sectors of the gillnet fishery.

*Comments Related to Enforcement*

*Comment 19:* Enforcement of the regulation is crucial to the success of the program.

*Response:* NMFS recognizes that enforcement is critical to the success of the BDTRP to reduce serious injury and mortality of bottlenose dolphins. NMFS will work with its Office of Law Enforcement, the U.S. Coast Guard, and state enforcement agents to ensure effective enforcement of the final rule.

*Comment 20:* One commenter stated that the biggest problem with the proposed rule is the ease with which fishermen will be able to circumvent the requirements.

*Response:* The combined efforts of Federal, state, and local enforcement agents will be instrumental in ensuring that commercial fishermen comply with these measures. Morever, commercial fishermen and industry representatives comprise approximately one-third of the BDTRT, and can assist NMFS with compliance via outreach to the fishermen they represent. Additionally, through the non-regulatory measures of the BDTRP, NMFS established mechanisms to help facilitate compliance with the regulatory measures. These will include several workshops and dockside visits to educate affected commercial fishermen on all aspects of the BDTRP, a website to facilitate dissemination of important compliance information to fishermen, and other outreach materials. NMFS also hired a Fishery Liaison to interact with the commercial fishing industry and help increase compliance with this final rule through these outreach endeavors.

*Comment 21:* Net length restrictions are currently used in the Harbor Porpoise Take Reduction Plan (HPTRP). However, they are difficult to determine at sea, inhibiting the ability of Coast Guard to actively enforce this measure.

*Response:* The use of net length restrictions is not a novel approach in fishery or marine mammal management and has been shown to be an effective management tool, especially when used in tandem with other management measures, such as area restrictions. NMFS Law Enforcement Agents and the U.S. Coast Guard have established protocols for measuring net lengths. While at sea enforcement of net length restrictions may be more difficult than other types of gear restrictions, the

difficulties do not outweigh their usefulness as an effective management tool.

*Comment 22:* One commenter stated that establishing one proximity distance for gillnets would facilitate enforcement. The proposed rule recommended a tending distance of 0.5 nautical mile (0.93 km) for medium and large mesh gillnets in New Jersey through Virginia during the summer and 0.25 nautical mile (0.46 km) tending distance for South Carolina, Georgia, and Florida year-round. Although previously considered and rejected, requiring the net to be attached to the vessel might be a better alternative for enforcement.

*Response:* NMFS believes the BDTRT's recommendations provide adequate reduction in serious injury and mortality of bottlenose dolphins while allowing flexibility in fishing technique per geographic area. The BDTRT did not recommend the same proximity distance for all MUs because of seasonal distributions of dolphins and different fishing techniques in those geographic areas. They did not recommend that the net be attached to the vessel because some fishermen use several nets at the same time, and requiring fishermen to attach the end of the net to their vessel would not allow flexibility in fishing technique.

*Comment 23:* One commenter referred to the Atlantic States Marine Fishery Commission's guidelines that recommend possession of restricted gear be prohibited, as it is easier to prove possession than it is to prove use.

*Response:* NMFS believes the rule will achieve necessary reduction in serious injury and mortalities for bottlenose dolphins, while allowing commercial fishermen the ability to stow and transport restricted gear for use during unrestricted times. The BDTRT did not discuss prohibiting such gear but recommended restricted gear be stowed on board the vessel before the vessel returns to port. Prohibiting possession of restricted gear altogether would unnecessarily restrict commercial fishermen. Furthermore, the states' gear marking requirements will enable enforcement officers to identify gear left in the water during restricted times.

*Comment 24:* Two commenters focused on the difficulty of adequately enforcing the requirements, specifically, gear tending and net length restrictions.

*Response:* NMFS believes that both gear tending and net lengths requirements are enforceable. These measures were recommended by the BDTRT, and were based on similar requirements used in other TRPs as management measures.

*Comment 25:* NMFS should initiate surprise boardings of vessels to ensure commercial fishermen are implementing these management measures.

*Response:* NMFS agrees, as is indicated by the fact that surprise boardings are a routine enforcement tool.

*Comment 26:* One commenter noted that the proposed rule only solicits state and local marine patrol aid in supporting the stranding network and does not address the recommendation to include requesting that Federal enforcement agents monitor inside waterways and Federal waters for bottlenose dolphin interactions with commercial fisheries to enhance geographic coverage and improve reporting/response of the stranding program. NMFS should modify the rule to address the recommendation to formally request that Federal, state, and local marine patrols monitor inside waterways for dolphin interactions with commercial fisheries.

*Response:* It is NMFS' intent to include Federal agents, in addition to state and local marine patrols, in this endeavor.

*Comment 27:* One commenter stated that no time frame is given as to when NMFS enforcement agents would attend future BDTRT meetings.

*Response:* NMFS enforcement agents will continue to participate in the BDTRT process.

*Comments Related to Gear Research*

*Comment 28:* NMFS should consider initiating a cooperative, volunteer research program.

*Response:* NMFS agrees that there is value in working cooperatively with other entities, and the Agency is currently working cooperatively with many academic institutions, state agencies, and other Federal agencies to conduct research. Within those cooperative working relationships, there are opportunities for interested individuals to volunteer their time to help accomplish NMFS' research endeavors.

*Comment 29:* Alternative gear technology should be explored as a way to reduce harmful interactions with marine animals. The proposed rule mentions gear modification research projects that were recommended by the BDTRT and will be implemented; however, there is no mention of who will implement these projects and how they will be funded.

*Response:* NMFS agrees and intends to continue funding gear research in the foreseeable future. NMFS allocated $100,000 for BDTRP-related gear research in both 2004 and 2005. NMFS is currently working cooperatively with North Carolina and Virginia Sea Grant Offices on various gear research projects. The BDTRT also recommended several gear research projects that are currently being investigated by state agencies and academia in cooperation with commercial fishermen. NMFS receives final reports at the conclusion of all research projects and research results will be presented to the BDTRT at future meetings.

*Comment 30:* NMFS should continue to evaluate specific gear characteristics with respect to their entanglement risk (i.e., mesh size compared to net material or net stiffness).

*Response:* The BDTRT recommended several gear research projects to evaluate the effects of changing gear mesh sizes, net material, twine stiffness, flotation, and bridle configuration to determine if modifying these characteristics would reduce the risk of dolphin entanglements while allowing the commercial fishermen to maintain their levels of catch. Members of academia, in collaboration with commercial fishermen, are currently investigating many of the BDTRT's recommended projects. Updates were presented to the BDTRT at the January 2005 meeting on gear research projects funded to that date. Results on projects that were funded after the BDTRT meeting will be forwarded to the BDTRT once the final results are provided to NMFS.

*Comment 31:* One of the proposed gear research projects for the BDTRP is to investigate lowering float lines in shark gillnets, which was estimated to cost $100,000. This money would be better spent buying out this fishery instead of conducting gear research projects, as there are so few participants in the fishery.

*Response:* NMFS does not agree that a buyout of the Southeast Atlantic shark gillnet fishery is a viable option for reducing bottlenose dolphin mortality to below PBR as required by the MMPA. The BDTRT recommended several gear research projects in their May 2002 Consensus Recommendations, including lowering float lines in the Southeast Atlantic shark gillnet fishery. NMFS aims to fulfill the gear research recommendations of the BDTRT and may explore other options for this fishery given the few participants.

*Comments Related to Implementation Delay*

*Comment 32:* NMFS provided updated data at the January 2005 BDTRT meeting. Therefore, NMFS should delay the rulemaking process to

allow for additional BDTRT meetings in which further updates are provided and for the BDTRT to make conservation recommendations, based on any updates, in the same manner they were invited to previously.

*Response:* The BDTRT provided Consensus Recommendations to NMFS based on a comprehensive 5–year dataset (1995–2000) that was thoroughly reviewed throughout the course of six meetings. At the January 2005 BDTRT meeting, NMFS provided the BDTRT with an update on mortality estimates for coastal bottlenose dolphins in each MU based on a two-year dataset (2001–2002). However, abundance estimates for this new time frame are still not available. NMFS does not believe reconvening the BDTRT for a full review of data, without updated abundance estimates, is warranted at this time. NMFS intends to reconvene the BDTRT once this final rule has been effective for at least 6 months. At that time, NMFS will provide the BDTRT with updated information on both abundance and mortality. This will allow the BDTRT to evaluate the effectiveness of the BDTRP in meeting its objectives and determining whether modifications are warranted.

*Comment 33:* Six commenters suggested that NMFS account for the time needed to acquire new gear when finalizing the rule and to delay components of the rule, as necessary, based upon the need to acquire new gear. NMFS should consider delaying the effective date of the rule 6 months to a year to allow fishermen time to acquire any new gear or webbing necessary to comply with the final rule, specifically for the gear marking and beach gear operating requirements as proposed.

*Response:* NMFS will not delay implementation of any portions of this final rule, beyond the usual 30–day delay (see Comment 34), because the beach gear and gear marking requirements are not included in this final rulemaking (see Comments 1 and 3, respectively). These were the only two requirements in the proposed rule that required the purchase of new gear or equipment.

*Comment 34:* These new measures should be delayed to allow adequate time for the affected commercial fishermen and states to review them.

*Response:* Following publication of the final rule in the **Federal Register**, there is an automatic 30–day implementation delay to allow time for affected commercial fishermen to review and comply with the requirements. During this time, NMFS will advise affected commercial fishermen on the components of the final BDTRP through workshops, dockside visits, and written informational materials.

*Comments Related to Management Approach*

*Comment 35:* One commenter stated that under the Marine Mammal Authorization Program (MMAP), which allows the incidental take of marine mammals while commercial fishing, fishermen should be exempt from regulations during severe weather conditions.

*Response:* The MMAP allows for the taking of marine mammals during commercial fishing operations as long as the fishermen have registered under the Program, report all injuries and mortalities, carry an observer when requested to do so, and comply with applicable TRPs and emergency regulations. The safety of commercial fishermen is a priority to NMFS. In severe weather conditions, NMFS understands that concerns for human safety are more important than fishing gear, and that fishermen may be unable to retrieve gear in certain conditions. However, fishing gear is the fishermen's responsibility and fishermen should try to anticipate future weather patterns and plan accordingly to the extent practicable.

*Comment 36:* One commenter stated that the proposed measures would prevent most interactions with dolphins and sea turtles as both are in the area at the same time and questioned why NMFS was proposing to close areas at times when neither species is around.

*Response:* The management measures contained in this final rule are based on the best available scientific data. NMFS is not closing areas or regulating fisheries in which there was no observed serious injury and mortality of bottlenose dolphins. Additionally, this final rule is not implementing the proposal to extend the seasonally-adjusted closures for sea turtles into North Carolina and Virginia State waters (see Comment 2).

*Comment 37:* One commenter recommended NMFS prohibit the use of shark gillnet gear in EEZ waters off the Southeastern U.S. coast or, at a minimum, off Georgia, because this fishery only consists of approximately six vessels, several of which are part-time.

*Response:* Although there is limited participation in this fishery and the fishery is known to incidentally take bottlenose dolphins and sea turtles, NMFS does not believe prohibiting this fishery is warranted at this time. Under the BDTRP, bottlenose dolphin mortalities are currently at or below PBR levels in the South Carolina, Georgia, and Florida MUs, and therefore, do not require further management measures than what are implemented in this final rule to achieve the short-term requirement of the MMPA to reduce serious injury and mortality. Regarding takes of sea turtles, the Biological Opinion for the Highly Migratory Species Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) determined that the continuation of this fishery will not jeopardize sea turtle species. Additionally, this fishery is actively managed under the Atlantic Large Whale Take Reduction Plan (ALWTRP), and the HMS FMP requires a high level of observer coverage for all fishery participants.

*Comment 38:* NMFS should prohibit all gillnet, driftnet, trawling, and longline gear.

*Response:* Prohibiting driftnet, trawling, and longline gear is not within the scope of this final rule. NMFS evaluated all fisheries that interact with the coastal bottlenose dolphin stock and will continue to do so each year under the List of Fisheries process. These final management measures were developed to offer regulatory and non-regulatory measures for only those Category I and II fisheries that are causing incidental mortality and serious injury of coastal bottlenose dolphins above PBR levels.

*Comment 39:* One commenter requested that NMFS extend the public comment period in order to give sufficient time for fishermen to comment due to their demanding schedules.

*Response:* While NMFS understands the demands and limitations of commercial fishing, NMFS believes it has provided the public ample time to review, attend public hearings, and submit public comments on the proposed rule. The public comment period was open for 90 days, which is the maximum time allowed under the MMPA, and NMFS conducted two public hearings during the public comment period. NMFS also contracted with a Fishery Liaison who conducted several group meetings during the public comment period to answer commercial fishermen's questions on the proposed rule and advise them on the procedure for submitting comments. NMFS received extensive and constructive comments on the proposed rule from fishermen and fishery organizations.

*Comments Related to Mortality and Abundance*

*Comment 40:* Several comments addressed abundance surveys of coastal bottlenose dolphins. Approximately 1,085 comments received via an E-mail letter of similar content urged NMFS to seek the necessary funding to improve bottlenose dolphin and sea turtle abundance surveys, as well as bycatch estimates, to ensure that the regulations provide sufficient protection. One commenter recommended that research initiatives prioritize bottlenose dolphin abundance surveys in waters southward of North Carolina and in bay and estuarine waters. Another commenter questioned whether and how efforts are made to determine if populations are increasing or decreasing, specifically in the Pamlico Sound area.

*Response:* NMFS recognizes the importance of providing sufficient funds to improve abundance and bycatch estimates for coastal bottlenose dolphins and sea turtles and will allocate such funding as available. For coastal bottlenose dolphins, NMFS places priority in conducting abundance surveys for all MUs within the range of the stock, including waters south of North Carolina and in bay and estuarine waters. Therefore, continued research on bottlenose dolphin stock structure and refinements of abundance estimation techniques are specifically included as non-regulatory components of this final rule.

NMFS recently conducted its summer (July 1 – August 15, 2004) and winter aerial (January 27 – February 28, 2005) surveys of coastal bottlenose dolphins to update abundance and distribution patterns between the areas of Cape Canaveral, Florida, and Delaware Bay, Delaware. Techniques to further refine stock structure were used in conjunction with the aerial surveys, including genetic and stable isotope analyses, telemetry studies, and photo identification. The results from these efforts are not yet available but NMFS will provide them to the BDTRT at future meetings and will also include them in updates to the Marine Mammal Stock Assessment Reports (*http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/sars.html*).

Aerial survey efforts for the coastal bottlenose dolphin stock were originally conducted in 1995 and updated in 2002. The survey methods are detailed in Garrison et al. (2003) and results of both efforts are reported in the final EA and the 2002 Stock Assessment Report (NMFS, 2002). The data from these surveys were used by the BDTRT to develop their 2002 and 2003 Consensus Recommendations on which NMFS based this final rule to implement the BDTRP.

Estuarine waters were not included in the 2002 abundance estimates. Other studies, however, were conducted to measure bottlenose dolphin abundance in estuarine waters, specifically Pamlico Sound, and were reviewed by the BDTRT. Read et al. (2003) conducted a mark-recapture study of bottlenose dolphins in Pamlico Sound and identified 306 individual dolphins.

Regarding sea turtle abundance estimates, NMFS, along with state resource agencies, have continuing programs that provide information to determine seasonal abundance, migratory routes, and important sea turtle habitats. Observer program data from fisheries and research conducted and/or funded by NMFS, as well as other information, are used to better understand sea turtle use of nearshore waters. Further research will continue to enhance our understanding of sea turtle ecology.

*Comment 41:* It is unclear whether bottlenose dolphins or sea turtles are present in the waters north of Cape Charles, Virginia from late November through January. These data are essential to evaluate bycatch reduction for both bottlenose dolphins and sea turtles from large mesh fisheries, such as striped bass, that may occur in State waters during that time.

*Response:* NMFS agrees that abundance data are necessary for evaluating whether bycatch reduction of bottlenose dolphins and sea turtles in affected fisheries is occurring at various times of the year. Bottlenose dolphin and sea turtle occurrence are known to be correlated with sea surface temperatures (Barco *et al.*, 1999; Coles, 1999; Epperly *et al.*, 1995; Garrison *et al.*, 2003; and Lutcavage & Musick, 1985). However, interannual variability in sea surface temperatures hinders NMFS' ability to conclusively determine abundance levels in northern areas during the winter. Therefore, aerial surveys and continuing observer coverage of fisheries operating at that time are the best ways to assess the potential risk to these species. Bottlenose dolphin bycatch in large mesh fisheries is recorded in observer reports for this area during winter. Three separate bottlenose dolphins entanglements were observed in the striped bass fishery off Virginia Beach during the months of November and March. There were no observed takes of sea turtles during this time.

The conservation measures implemented in this final rule are designed to aid in reducing interactions in these areas. Additionally, the VMRC instituted a striped bass quota system in 2003 that will also aid in decreasing interactions with protected species, as the striped bass fishery effort was reduced by about 70 percent. VMRC also enacted a regulation in May 2005 to further reduce the presence of large mesh gear in State waters by restricting the monkfish fishery. NMFS is confident that these conservation measures will reduce takes of coastal bottlenose dolphins and sea turtles despite the uncertainty in their northern distribution during the winter.

*Comment 42:* The Winter Mixed MU (which includes the Northern Migratory, Northern and Southern North Carolina MUs) has an estimated bycatch of 151 with a PBR level of 67.8. Why is the estimated bycatch in this MU so high and are all 151 animals a result of commercial fishing effort?

*Response:* Data presented to the BDTRT by Rossman and Palka (2001) indicate that total bottlenose dolphin bycatch rates were highest in the Winter Mixed MU, which includes the coast of North Carolina and southern Virginia. Bycatch rates for this MU ranged from 211 dolphins per year in 1997 to 146 dolphins in 2000. Most of these takes occurred in North Carolina with fewer takes in Virginia waters.

As discussed in Comment 43, estimating bycatch is based on observed takes, as well as other variables, such as seasonal MU, distance from shore, and gillnet mesh size. Also noted in Comment 46 was Palka and Rossman's (2001) determination that distance from shore and gillnet mesh size were the two factors exhibiting the strongest correlation to increased bycatch estimates. Based on Palka and Rossman's (2001) analyses, estimated bycatch was highest in the Winter Mixed MU because large mesh landings (an indicator of effort) were increased in State waters during the winter, and observed takes were highest in this MU. [This doesn't really answer the question of why the bycatch was so high.] The data used to estimate bycatch came directly from commercial fisheries and were based on both observer and landings data. Of the 151 bycaught animals, almost half (45 percent) were from the large mesh fishery targeting monkfish, striped bass, or black drum. One-third (36 percent) of the 151 bycaught animals were from the medium mesh fishery targeting dogfish, shad, king Mackerel, sharks, or fluke.

*Comment 43:* Several commenters suggested that the data on bottlenose dolphin serious injury and mortality from commercial fisheries are biased because NMFS presumes that

commercial fisheries cause all mortalities in which cause of death is not conclusive.

*Response:* The data used to calculate total mortality of coastal bottlenose dolphins per MU were based on the best available information. Information from observer coverage data are the only data used to estimate mortality rates of coastal bottlenose dolphins per fishery. The observer program randomly selects vessels to reduce the potential for bias. Further, the statistical method applied to the observer data to generate total bycatch estimates has a lower statistical bias in comparison to other methods, such as the ratio-estimator (Cochrane, 1977) and Delta Method (Pennington, 1996).

Rossman and Palka (2001) used a standard statistical model, called a generalized linear model (GLM), to estimate total bottlenose dolphin bycatch. The GLM quantifies the relationship between the number of observed takes and several variables, which include observed landings, seasonal MU, body of water (Federal or State waters), and mesh size (small, medium, and large). Landings and observer data from November 1995 through October 2000 were used to estimate bycatch. Two data sources were used to determine landings: (1) the NMFS Northeast Region dealer-reported commercial landings database; and (2) the NCDMF trip ticket program database (Palka and Rossman, 2001). Although limitations exist in using landings as a measure of effort, landings, as recorded on trip tickets, are the best available information to quantify effort. NMFS plans to explore other measures of effort in order to reduce these limitations.

*Comment 44:* One commenter asked why NMFS is proposing to regulate small mesh gillnets under the BDTRP when large mesh gillnets are the problem.

*Response:* Based on information from observed takes, NMFS believes it is necessary to regulate the small mesh gillnet fishery through this final rule to achieve the objectives of the BDTRP. The only regulation for the small mesh gillnet fishery included in this final rule is a requirement that net lengths be less than or equal to 1,000 ft (304.8 m) to reduce bycatch of the Summer Northern North Carolina MU. The proposed rule to implement the BDTRP also included measures to regulate small mesh gillnets and beach seines within the first 300 ft (91.4 m) of the beach/water interface. As stated in the response to Comment 1, NMFS is not including regulations for beach gear in this final rule.

Regulations for small mesh gear are necessary because estimated serious injury and mortality are above PBR for the Summer Northern North Carolina MU. The bycatch rates were highest for the large mesh fisheries and lowest for the small mesh fisheries. However, fishing effort for the small mesh fishery was higher than those for medium and large mesh fisheries. Combining lower bycatch rates and higher fishing effort results in an estimated bycatch for the small mesh fisheries nearly equal that of the large mesh fisheries.

Specifically, there were three observed takes of coastal bottlenose dolphin in the Spanish mackerel fishery (mesh sizes approximately 3–4 inches (7.62 - 10.46 cm)) in North Carolina during the summer. These takes occurred in nets longer than 1,000 ft (304.8 m) that were set from the beach. The net length restriction is based on the determination that the potential for interactions with small mesh gear will be reduced if less gear is in the water.

*Comments Related to the NC Monkfish Fishery*

*Comment 45:* One commenter believes the North Carolina inshore monkfish fishery is being regulated without cause, as there is little to no observer data to support the proposed regulations, especially regarding why this fishery cannot operate from late February through early April. The commenter noted that observed trips have indicated no interactions with sea turtles and marine mammals, and data in general does not support closing down this fishery. Specifically, there was one trip out of 56 that reported a take of a loggerhead turtle during a 4–year period.

*Response:* NMFS disagrees that there is little data to support regulating this fishery. From 1995 through 2004, 16 sea turtles and two small cetaceans interactions were recorded as bycatch in the North Carolina monkfish fishery in Federal waters between March and April. Although all takes occurred in Federal waters, only 28 hauls were observed in State waters versus 279 hauls in Federal waters. NMFS believes these restrictions are warranted in North Carolina due to the bycatch history and because of the increased effort in State waters (see Comment 46).

Data for 1996 through 2000 show 164 monkfish gillnet hauls observed in Virginia and North Carolina. During this time, 13 loggerhead takes (12 in North Carolina) and one Kemp's Ridley take in North Carolina were recorded. In 2001, 438 monkfish gillnet hauls were observed with 4 loggerhead takes recorded (1 in North Carolina), as well as one bottlenose dolphin interaction in North Carolina. Finally, between 2002 and 2004, 188 monkfish gillnet hauls were observed in which two harbor porpoise and one gray seal interaction were recorded in Virginia.

However, as detailed in the response to Comment 2, NMFS is not finalizing changes to the existing mid-Atlantic large mesh gillnet rule as a result of new information and forthcoming state fishery restrictions in Virginia and North Carolina.

*Comment 46:* The North Carolina inshore monkfish fishery should be exempt from the prohibition of large mesh gillnets with tie-downs for North Carolina from December 16–April 15 in the waters of the Atlantic Ocean from Cape Hatteras, North Carolina to the Virginia/North Carolina border from 2 nautical miles (3.7 km) to 3 nautical miles (5.6 km) seaward of the beach.

*Response:* Based on gear characteristics and observer data for this fishery, NMFS believes the North Carolina inshore monkfish fishery warrants the full regulatory measures identified in this final rule. The monkfish fishery in State waters uses large mesh gillnets with long soak times. As indicated in the response to Comment 45, in the monkfish fishery, there are 16 documented takes of sea turtles and two of small cetaceans, including a bottlenose dolphin.

Fisheries with large mesh gillnets and long soak times that operate in State waters are correlated with bottlenose dolphin bycatch (Palka and Rossman, 2001). However, distance from shore and gillnet mesh size were the two factors exhibiting the strongest relationship to bycatch estimates. Palka and Rossman (2001) found that the highest bycatch rates of coastal bottlenose dolphins in the mid-Atlantic gillnet fisheries occurred in large mesh fisheries and in hauls within State waters.

The regulation prohibiting large mesh gillnet gear in State waters with tie-downs from December 16 to April 14 is a conservation measure designed to prevent a further shift in effort of the monkfish fishery into State waters. Recent landings data indicate an increase in large mesh fishing effort in North Carolina during the winter. Landings information also shows an increase in the number of vessels monkfish fishing in North Carolina State waters since the enactment of the mid-Atlantic large mesh gillnet rule in 2002.

*Comments Related to Night Fishing Restrictions*

*Comment 47:* One commenter specifically noted the proposed large mesh restriction in the Winter Mixed MU for Virginia in which no person

may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night. The commenter stated that fishermen would be entering dangerous inlets after sunset with a boat that is out of balance because of a higher center of gravity when the net reel has a net on it.

*Response:* NMFS believes that limiting fishing at night in State waters of the Winter Mixed MU is necessary to meet the objectives of the BDTRP. Several alternatives were analyzed to determine which management measures would meet the objectives of the BDTRP, while having the least hardship on commercial fishermen (Palka and Rossman, 2003). The regulation against night fishing in Virginia from November 1 to December 31 was the only alternative that would allow the objectives of the BDTRP to be met for this MU.

The BDTRT recommended this management measure taking into consideration input provided by the members of the BDTRT representing large mesh commercial fishermen in Virginia. Specific safety concerns were not mentioned during the BDTRT deliberations when discussing this alternative, beyond noting that sea state, winds, and visibility are always factored into decisions regarding fishermen's return time and how gear is stowed during the return. Recognizing that heavy net reels create a higher center of gravity, which may be a safety concern in severe weather, fishermen have the option of removing their nets from the reel to stow them below or in a hold if high seas are a concern. NMFS understands that some fishing practices may need to be altered to comply with this management measure and strongly recommends that fishermen take all precautions to stow gear appropriately to address human safety concerns.

*Comment 48:* Two commenters indicated that it would not be feasible to complete fishing operations before sunset, as it usually takes many hours to retrieve and sort the catch.

*Response:* Based on net retrieval information collected through the observer program, the average haul time for fishermen with large mesh gillnets for a 1,100 foot (335.28 m) net was less than 20 minutes. Data also indicate that fishermen have an average of six net strings per trip. Based on that data, there is an average of 1 hour deployment time with about 2 hours to haul gear per trip, leaving approximately 10 hours of fishing per day depending on the time of year. NMFS believes stowing large mesh gillnets before sunset is operationally feasible based on these data.

*Comments Related to Observer Coverage*

*Comment 49:* Seven commenters indicated that it is critical that the observer program be enhanced to provide adequate observer coverage because the probability of detection and the level of observer data are too low to determine whether the bycatch mitigation measures in the BDTRP are effective and if the bycatch rate will be reduced to below PBR as required by the MMPA. Suggestions to enhance the observer program included: (1) securing increased Federal appropriations to increase observer coverage; (2) using alternative observer platforms more widely to observe more hauls from small vessels in coastal waters, especially small and medium mesh gillnet fisheries to prevent an effort shift from large mesh closures in North Carolina; (3) working with other states and researchers who deploy observers to devise a consistent and complementary program that will allow NMFS to use this data for bycatch estimates; (4) improving the deployment of observers throughout a fishery rather than targeting only those fishermen consistently taking observers; (5) developing a good estimate of how many fishermen are in the different fisheries, what the gear characteristics are and where they are fished; (6) improving cooperation between the NMFS Southeast and Northeast Regions; (7) creating a prioritization of fisheries that need coverage, by (a) identifying specific areas for increased coverage, such as: southern North Carolina gillnets, inshore gillnets, near shore gillnets, and (b) identifying holes in data needed for assessments; and (8) assessing bycatch of other finfish, sea turtles, and sea birds to allow for an evaluation of actual dolphin bycatch reduction versus the cost to other resources.

*Response:* NMFS agrees with the above comments and suggestions and is exploring all of these options for enhancing the observer program. In 2005, NMFS allocated additional funding to enhance the observer program. These funds were used to hire a field coordinator and an assistant in North Carolina to better characterize fisheries and explore the use of alternative platforms, especially in nearshore waters. The information provided by these observers will specifically address comments two through seven. To clarify, the observer program does not distribute the observed trips based on pre-specified fishery characteristics, such as mesh size. The observed trips are distributed by ports, based on landings, and the trip schedule attempts to capture a representative sample of vessels departing from each port. The information collected by the North Carolina-based field coordinator will aid in distributing trips where observer gaps may exist due to real-time effort shifts.

NMFS initiated discussions with state agencies to explore developing a cooperative monitoring program and is planning to conduct workshops to: (1) identify gaps in observer coverage; (2) develop cooperative programs with states and other researchers; and (3) increase coverage to increase statistical reliability of bycatch estimates. Finally, working cooperatively with state agencies and increasing observer coverage through alternative platforms will help assess bycatch of other marine species and sea birds to evaluate whether dolphin bycatch reduction measures are increasing bycatch of these species.

*Comment 50:* Several commenters expressed the need to increase observer coverage for fisheries affected by the proposed beach gear operating requirements to determine exactly which gear types are responsible for bottlenose dolphin entanglements.

*Response:* NMFS is exploring many options for increasing observer coverage in North Carolina nearshore waters. These include efforts outlined in the response to Comment 49.

*Comment 51:* Two commenters expressed concern that the data from the observer program are not being used properly in management decisions. When there is justification that regulations can provide necessary protection for species of concern and this justification is supported by the NMFS observer program, regulations should be supported and implemented. However, when there are well-documented data from the observer program to verify that a fishery can be conducted in a specific time and area without protected species interactions, these data cannot and should not be ignored.

*Response:* NMFS only uses observer data to direct the development and implementation of management measures and monitor the effectiveness of those management measures. Based on observer data, regulations are being implemented to reduce bottlenose dolphin serious injury and mortality below PBR for relevant MUs. The short-term goal of the MMPA requires NMFS to reduce serious injury and mortality below PBR within 6 months of implementation of the BDTRP. The management measures implemented in

the BDTRP achieve this goal without creating undue burden on the commercial fishermen and are justified through observer data. See Comment 43 for discussion on how bycatch estimates are derived.

Regarding concerns about observer data not justifying the proposed extension of seasonally-adjusted closures into North Carolina and Virginia State waters, which included the black drum fishery, NMFS is not finalizing this proposed extension as noted in Comment 2.

*Comment 52:* One commenter questioned how many interactions there had been between bottlenose dolphins and small mesh fisheries off the beach.

*Response:* The BDTRT examined observer data collected on ocean gillnet trips from 1995 to 2000, during which 12 incidental takes of bottlenose dolphins occurred across all mesh size categories. Five of these observed interactions were in small mesh gillnets (less than or equal to 5–inches (12.7 cm) stretched mesh). For the North Carolina beach seine fishery, the BDTRT examined observer data from 1998 through 2002. During this period, two bottlenose dolphin entanglements occurred, both in monofilament webbing. One of these was in small mesh webbing and the other was in large mesh webbing (greater than or equal to 7–inches (17.8 cm) stretched mesh). These interactions represent total bycatch observed; however, observer coverage in State waters was often less than 1 percent, which can result in negatively biased bycatch estimates.

*Comments Related to the Proximity Requirement*

*Comment 53:* Two commenters expressed concern over the difficulty of fishing with the proximity requirement, especially for overnight and deep sets. Two other commenters requested clarification as to why proximity requirements were necessary.

*Response:* Two separate proximity management measures are included in this final rule: (1) from June 1–October 31, in New Jersey through Maryland State waters for medium and large mesh gillnets, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessels returns to port; and (2) year-round, for South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical mile (0.46 km) of the closest portion of the gillnet. The BDTRT recommended these proximity requirements to meet the objectives of the BDTRP because it would limit soak times and the amount of net in the water, thereby reducing bycatch of bottlenose dolphins, as well as allow closer monitoring of the net to reduce the potential for serious injury and mortality should a dolphin become entangled. NMFS understands fishing practices may need to be altered to accommodate the proximity requirements in these MUs, but it is a necessary component of the BDTRP.

*Comments Related to Regulatory Clarifications*

*Comment 54:* The sunset clause for restrictions on medium mesh fisheries in Northern and Southern North Carolina MUs should be established 3 years from the effective date of the final rule, rather than the November 12, 2007, date specified in the proposed rule.

*Response:* The November 12, 2007, date printed in the proposed rule was an error. The intent of the BDTRT and of NMFS was to establish a 3–year sunset clause, which means that the management measures will expire and be revisited 3 years from the effective date of the final rule. The effective date of this final rule will be 30–days following publication in the **Federal Register**. The measures in 50 CFR 229.35(d)(4)(ii) and 229.35(d)(5)(i) will expire on May 26, 2009.

*Comment 55:* Proposed regulatory text in 50 CFR 223.206(d)(8)(ii) of the proposed rule states that no more than 1,000 feet (304.8 m) of net may be set, and the vessel must remain within 0.25 nautical mile (0.46 km) of the net at all times; however proposed regulatory text in 50 CFR 229.35 of the proposed rule does not provide a limitation to one net. The regulatory text in both sections should be aligned and clarified if only one net is allowed per fishermen.

*Response:* The regulatory text in § 223.206(d)(8)(ii) referenced above from the proposed rule is not included in this final rule (see Comment 2).

*Comment 56:* Without a maximum tie-down length, it is possible that bridles may be used to fulfill the letter of the regulations without fulfilling their intent. For ease of enforcement, tie-down language should be consistent with the HPTRP.

*Response:* Tie-down language was recommended by the BDTRT to be consistent with the tie-down system as described in the HPTRP (50 CFR 229.34(c)) and is intended to be as such under this final rule to implement the BDTRP. As described in 50 CFR 229.34(c), tie-downs may not be spaced more than 15 ft (4.6 m) apart along the float line, and each tie-down is not more than 48 inches (18.9 cm) in length from the point where it connects to the float line to the point where it connects to the lead line.

*Comment 57:* The proposed rule does not clearly state that the inshore shad fishery is not part of the larger Category II Southeast Atlantic gillnet fishery. This can lead to misinterpretation that the Georgia shad fishery is required to follow the proposed gear marking requirements in waters inside the 72 COLREGS line. The final rule and 2005 List of Fisheries should clearly state that the inshore shad fishery is not part of the Category II Southeast Atlantic gillnet fishery.

*Response:* Comments received in regards to the 2005 List of Fisheries must be addressed through the List of Fisheries rulemaking process. As noted in Comment 3, gear marking requirements are not included in this final rule and regulatory requirements for gillnets do not extend into waters landward of the 72 COLREGS line in Georgia. This should prevent any misinterpretation that the Georgia shad fishery is required to adhere to regulatory requirements under the BDTRP.

*Comment 58:* The seine definition does not capture the current fishing practice, as a tail bag is no longer used.

*Response:* The seine definition was developed to mirror the NCDMF definition of a seine, as the majority of the seine regulations were proposed for North Carolina. However, recognizing that the geographic area affected by this final rule ranges from New Jersey through the east coast of Florida, NMFS is clarifying the definition of seine gear by noting that, in some regions, the net may be constructed with a capture bag.

The seine definition is still included in this final rule even though regulatory measures affecting seines in North Carolina are not being implemented. This definition is included to aid in enforcement of the BDTRP and prevent confusion over what is considered a seine versus gillnet, as monofilament webbing is used is some geographic areas as a seine. A gillnet is currently defined in 50 CFR 229.9 and specifies that the nets are designed ''...to capture fish by entanglement, gilling, or wedging...'' A seine is defined in this final rule as a net that ''...captures fish by encirclement and confining fish within itself or against another net, the shore or bank...'' Therefore, any nets constructed of monofilament webbing that are entangling, gilling, or wedging fish are considered a gillnet and subject to the regulatory requirements in the BDTRP.

*Comments Related to Regulated Waters*

*Comment 59:* One commenter asked how the geographic areas were determined for the BDTRP and the mid-Atlantic large mesh gillnet rule proposed regulations, and why they were not combined to encompass larger areas.

*Response:* The coastal bottlenose dolphin stock is considered one migratory unit in its entire range from New Jersey to Florida. Because the stock was determined to be more structurally complex both spatially and temporally, the stock was separated into seven MUs based on these seasonal and geographic complexities. The BDTRP regulations are based on these MUs. For the mid-Atlantic large mesh gillnet rule, the geographic boundaries for the proposed rolling closures were the same as those in the EEZ closures, which were based on sea surface temperatures, as sea turtles migrate in and out of waters based on water temperatures. Therefore, even though the larger geographic area of coastal bottlenose dolphins and sea turtles coincide, management measures would not be appropriate for this larger geographic area because of the spatial and temporal complexities of each species. Furthermore, NMFS also chose not to align geographic boundaries between the two proposed rules in order to minimize impacts on commercial fishermen.

*Comment 60:* One commenter recommended that the 6.5 and 14.6 nautical mile (12 and 27 km) boundary lines for the geographic scope of the BDTRP be changed to 6.0 and 12.0 nautical miles (11.1 and 22.2 km), respectively, to align with existing nautical chart lines and for enforcement. Another commenter requested clarification of the term ''inside waterways.''

*Response:* The BDTRT recommended the geographic scope of the BDTRP be based on the range of the western North Atlantic coastal bottlenose dolphin stock, which is within 6.5 nautical miles (12 km) of shore between the New York-New Jersey border and Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward through the east coast of Florida. Pertinent observer effort, abundance, and mortality data are derived using these boundaries, therefore, it makes sense to retain the current boundaries.

NMFS recognizes that the areas of application of the BDTRP and of specific regulatory requirements were difficult to understand in the proposed rule. Although the overall geographic scope of the BDTRP is the range of the coastal bottlenose dolphin as described above, the BDTRP does not include regulatory requirements in waters outside of 3 nautical miles (5.5 km), north of the North Carolina/South Carolina border. In South Carolina, Georgia, and Florida, regulatory requirements do extend out to 14.6 nautical miles (27 km). Therefore, in this final rule, NMFS is adding a description of the geographic scope of the BDTRP in 229.35(a) and clarifying regulated waters in § 229.35(c) by referring to and defining each area regulated in § 229.35(b).

To aid in this clarification, NMFS is omitting the term ''exempted waters'' from § 229.35(c), which was informally referred to by the BDTRT as ''inside waterways.'' These waters are any marine and tidal waters landward of the first bridge over any embayment, harbor, or inlet; or in cases where there is no bridge, waters that are landward of the 72 COLREGS line. In § 229.35(c) for regulated waters, NMFS is clarifying which areas are not regulated waters by excluding those inshore waters identified in § 229.34(a)(2), except from Chincoteague to Ship Shoal Inlet in Virginia, and South Carolina, Georgia, and Florida waters, where waters landward of the 72 COLREGS line are not regulated for the purposes of this rule.

*Comment 61:* NMFS needs to allow the states to regulate their own waters.

*Response:* NMFS is mandated to manage, conserve, and recover marine mammal stocks and listed species throughout their range regardless of the state/Federal jurisdictional lines. However, NMFS will work with the states in accomplishing these mandates where appropriate. NMFS collaborated with state agencies in developing this final rule to implement the BDTRP, as representatives from each state along the east coast participated as members of the BDTRT. Additionally, based upon new information, forthcoming state regulations, and NMFS collaboration with state agencies, NMFS is not proceeding with the proposed changes to the ESA mid-Atlantic large mesh gillnet regulation at this time.

*Comments Related to Statutory Mandates*

*Comment 62:* The final rule must meet all legal requirements including the MMP's statutory deadlines, the Magnuson-Stevens Fishery Conservation and Management Act's (Magnuson-Stevens Act) bycatch assessment and reduction mandates, and the safeguards of the ESA. The statutory deadlines for developing and promulgating MMPA section 118 of the MMPA have been exceeded.

*Response:* NMFS will endeavor to meet all legal requirements under each applicable statute. The Agency is aware of the statutory deadlines in section 118 of the MMPA and is working diligently to ensure this rule is implemented expeditiously and meets all other statutory requirements of the MMPA and is a product that reflects the BDTRT's recommendations and the public comments received.

*Comment 63:* Although elements of the BDTRP will contribute to achieving the zero rate mortality goal (ZRMG), there is not an apparent comprehensive strategy, plan and schedule to achieve ZMRG. A committee from the BDTRT should be convened to solely address meeting the long-term ZMRG.

*Response:* TRPs have short- and long-term goals for measuring success of the plan, which are, respectively, to reduce takes to below PBR within six months of implementation of the final plan and to reduce takes to an insignificant level approaching a zero mortality and serious injury rate taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans, within five years of implementation. The proposed BDTRP is expected to meet the short-term goal, which was the primary objective and first step for the BDTRT. This initial plan also provides a framework for reaching the long-term goal. NMFS intends to reconvene the BDTRT after the BDTRP has been in place for six months to evaluate the effectiveness of the BDTRP, to discuss new data, and to discuss the strategy for meeting ZMRG, which is the secondary objective of the BDTRP and the next step in this process.

*Comment 64:* If the take of a federally-protected species under the ESA is authorized by this final rule, then preparation of an Environmental Impact Statement (EIS) is required. Rather than authorizing take of federally-protected species, NMFS should impose the proposed regulations, monitor and observe for any take, and if such take occurs, require the appropriate state fisheries agencies to apply for an Incidental Take Permit pursuant to section 10 of the ESA. At such time, NMFS could produce the required EIS when issuing a section 10 permit.

*Response:* NMFS is not authorizing take of any ESA-listed species as a result of these actions. NMFS is implementing this final rule and will continue to observe and monitor the fisheries included under the BDTRP. If additional measures are required to address takes

of listed species, NMFS will pursue those, as appropriate, possibly under authority of the Magnuson-Stevens Act, MMPA, or ESA, including ESA section 10 provisions.

*Comment 65:* Two commenters reminded NMFS of the responsibility to develop a biological opinion to include in the NEPA analysis.

*Response:* ESA section 7 consultation analysis for this final rule concluded that the action was not likely to adversely affected listed species. Thus, no biological opinion was prepared.

*Comment 66:* NMFS should apply for a Migratory Bird Treaty Act (MBTA) permit and promulgate appropriate regulations to reduce or eliminate seabird bycatch.

*Response:* This final rule is intended to prevent the incidental take of bottlenose dolphins from commercial fisheries in tidal and marine waters within 6.5 nautical miles (12 km) of the New York/New Jersey border south to Cape Hatteras, North Carolina and within 14.6 nautical miles (27 km) of shore from Cape Hatteras south and including the east coast of Florida. However, the MBTA only applies to nearshore waters, and NMFS does not manage the fisheries affected by these regulations, except through the authority given under MMPA section 118, because they occur in State waters. Comments concerning compliance with the MBTA in these fisheries should be directed to appropriate state fishery management agencies.

*Comments Related to Strandings and Disentanglements*

*Comment 67:* There should be clear guidance given on protocols to disentangle small cetaceans and sea turtles.

*Response:* NMFS agrees and intends to develop guidance on disentanglement procedures and provide training in the form of workshops and educational materials for commercial fishermen, specifically for small cetaceans and sea turtles entangled in gillnet gear. One guideline is currently available for how to handle/release marine mammals entangled in pelagic longline gear and another guideline is also available for recreational fishermen on how to protect marine mammals and sea turtles, which includes techniques for releasing entangled sea turtles.

*Comment 68:* Providing training to stranding network participants on how to respond to strandings and entanglements is past due, as preventing entanglements should have been the first step.

*Response:* NMFS agrees that preventing entanglements of marine species is always the primary concern and goal. These proposed regulations are designed to reduce and prevent these entanglements.

*Comment 69:* Necropsies on stranded animals should be performed and these results should be provided to the public.

*Response:* Necropsies are conducted on all stranded and entangled marine mammals. The public may request and receive certain necropsy data maintained by NMFS. Additional necropsy data not collected or maintained by NMFS must be requested from the collector of the data.

**Changes From the Proposed Rule**

As explained in the *Comments and Responses* section above and the following section, NMFS is making four changes from the proposed rule published on November 10, 2004 (69 FR 65127) to this final rule. These changes are summarized here.

(1) The proposal to amend the current mid-Atlantic large mesh gillnet rule (67 FR 71895) in 50 CFR 223.206(d)(8)(i) and 223.206(d)(8)(ii) by extending the seasonally-adjusted closures into North Carolina and Virginia State waters is not being implemented in this final rule (see Comment 2). At the time the proposed rule was published, NMFS believed modifying the existing seasonally-adjusted closures would reduce the potential for incidental capture of sea turtles in state-managed, large mesh gillnet fisheries, as well as provide necessary conservation benefits to the coastal bottlenose dolphin stock. However, upon analysis of information received following the public comment period, NMFS determined that these measures are not necessary. NMFS will continue to monitor and evaluate on an annual basis all fishery interactions with protected species to ensure existing state and Federal conservation measures are adequate.

(2) The beach gear operating requirements proposed in 229.3 (s) and (t) and 229.35(3)(i)(A) of the proposed rule are not being implemented in this final rule (see Comment 1). NMFS will re-evaluate the need for these restrictions once further information on fisheries interactions and gear characteristics are assessed. Consequently, with the exception of the seine definition, all references to North Carolina long haul beach seine, North Carolina roe mullet stop net, and seines were omitted from the regulatory text as they appeared in the proposed rule.

(3) The proposed gear marking requirements under § 229.35(d)(1) and (2) are not implemented in this final rule (see Comment 3). These requirements are not included in this final rule because each state affected by the BDTRP currently maintains gear marking requirements sufficient to meet the Agency's enforcement needs for the BDTRP. Consequently, the above-referenced sections and any other regulatory text indicating the need to mark gear were omitted from the final rule.

(4) The proposed rule stated that waters landward of the lines identified in § 229.34(a)(2), and South Carolina, Georgia, and Florida waters landward of the 72 COLREGS demarcation line, will not be subject to the regulations in the rule. However, a technical error resulted from referring to all the lines noted in § 229.34(a)(2) as non-regulated waters, specifically from Chincoteague to Ship Shoal Inlet (37° 52′ N. 75° 24.30′ W. TO 37° 11.90′ N. 75° 48.30′ W) in Virginia state waters. Virginia state waters are included in the Summer Northern Migratory MU and corresponding regulations, as indicated by the BDTRT's Consensus Recommendations and the proposed rule, and were analyzed in the EA. Regulations for this MU are from June 1–October 31 in state waters (out to 3 nautical miles) from New Jersey through Virginia. However, the line referenced above from Chincoteague to Ship Shoal Inlet intersects the state waters line. Therefore, § 229.35(c) of this final rule now refers to waters landward of the 72 COLREGS demarcation line as non-regulated waters instead of referring to § 229.34(a)(2) for waters landward of the line from 37° 52′ N. 75° 24.30′ W. TO 37° 11.90′ N. 75° 48.30′ W (Chincoteague to Ship Shoal Inlet).

Therefore, this final rule contains two actions under the MMPA and ESA regulatory authorities, respectively, and include: (1) regulatory and non-regulatory management measures implementing a BDTRP for seven MUs within the western North Atlantic coastal bottlenose dolphin stock's geographic range. Implementing these management measures through this final rule constitutes the Agency's final BDTRP; and (2) a revision to the large mesh gillnet size restriction in the mid-Atlantic large mesh gillnet rule to protect endangered and threatened sea turtles. The management measures under the MMPA are designed to reduce serious injury and mortality of dolphins. The change in the large mesh size restriction under the ESA does not directly reduce the potential for incidental take of sea turtles; instead, it is intended to provide more consistency in Federal and state regulations for large mesh gillnets along the mid-Atlantic and facilitate commercial fishermen compliance of various large mesh

regulations in the mid-Atlantic. Specifically, revising the large mesh size restriction will align large mesh definitions amongst the existing HPTRP, NCDMF regulations, and this final rule implementing the BDTRP.

**Classification**

The proposed rule was determined significant for purposes of Executive Order 12866.

A draft EA was prepared for the proposed rule and was finalized based on the changes made from the proposed to final rule. The conclusion of the EA was that this action will not pose a significant impact on the human environment.

NMFS prepared a Final Regulatory Flexibility Act (FRFA), based on the Regulatory Impact Review (RIR), of the final rule. A statement of the need for and objectives of the final rule is stated elsewhere in the preamble and is not repeated here. A summary of the FRFA follows:

NMFS must reduce the incidental mortality and serious injury of marine mammals associated with commercial fisheries, as mandated by the MMPA. Coastal bottlenose dolphins continue to experience mortality incidental to commercial fishing activities at levels greater than are sustainable, as identified by serious injury and mortality levels of bottlenose dolphin in excess of the stock's PBR. The specific objectives of this final rule are to reduce bottlenose dolphin incidental mortality and serious injury in commercial fishing gear below PBR within six months of rule implementation and to provide consistency among state and Federal management measures by revising the large mesh size restriction under the mid-Atlantic large mesh gillnet rule while maintaining protections for listed sea turtles. The MMPA and ESA provide the legal bases for this final rule.

Significant issues were raised by the public in response to the expected impacts of the beach gear operating management measures, rolling closures of the large mesh gillnet fishery in North Carolina and Virginia State waters to protect sea turtles, and gear marking requirements contained in the proposed rule. In general, the issues raised were, respectively: (1) the economic assessment for the proposed beach seine measures did not fully encompass all entities affected; (2) the exemptions proposed to minimize the impacts of the large mesh rolling closures in Virginia did not reflect, as they were intended, the actual fishing methods used; (3) the gear marking requirements were excessive and not feasible.

Based on public comment and additional information received, NMFS determined that the proposed beach gear and gear marking requirements, as well as the proposed extension of seasonally-adjusted closures into North Carolina and Virginia State waters are not warranted at this time. New analyses indicate that the beach gear operating requirements are not currently necessary to achieve the short-term objectives of the BDTRP (Palka and Rossman, 2005). All states affected by the BDTRP already have sufficient gear marking requirements to fulfill NMFS' enforcement and gear identification objectives, with the exception of Georgia where gillnet fishing is prohibited in State waters. Additionally, NCDMF is developing state management measures for large mesh gillnet fisheries that will provide equal or greater protection to sea turtles than the proposed federally-imposed closures while allowing the state greater flexibility in managing their fisheries. Furthermore, following the publication of the proposed rule, VMRC enacted regulations to further manage large mesh gillnets in State waters and to eliminate monkfish gillnetting, the fishery of primary concern for incidental capture of sea turtles. The seasonally-adjusted closures for North Carolina and Virginia state waters were, therefore, deemed unnecessary. NMFS intends to conduct additional research to determine if the beach gear requirements, gear marking requirements, and seasonally-adjusted closures are necessary in the future. These measures are, therefore, not contained in the final rule.

A total of 3,079 entities were identified as having recorded landings in the 2001 fishing season using gillnet gear in North Carolina through New Jersey and will be affected by the fishing restrictions contained in this final rule. Total harvests from all fisheries by these entities are estimated to have an ex-vessel value of $98 million, or an average of approximately $32,000 per entity.

All commercial fishing operations in the respective gillnet fisheries that operate in the manner and location encompassed by the rule will be affected by this final rule. The benchmarks for a fish-harvesting business to be considered a small entity are whether the entity is independently owned and operated, not dominant in its field operation, and has annual receipts not in excess of $3.5 million. Given the average revenue information provided above, all operations in the gillnet fisheries are considered small entities.

The determination of significant economic impact can be ascertained by examining two issues: Disproportionality and profitability. Disproportionality refers to whether the regulations will place a substantial number of small entities at a significant competitive disadvantage to large entities. All entities participating in the respective gillnet fisheries are considered small entities, so the issue of disproportionality is not relevant to this rulemaking.

Profitability refers to whether the regulations significantly reduce profit for a substantial number of small entities. Information on the profit profile of participants in the respective gillnet fisheries covered by this final rule is not available. Inferences on the effects of this final rule on profitability of the impacted entities, however, may be drawn from examination of the expected impacts on ex-vessel revenues. Total costs associated with harvest reductions (lost ex-vessel revenue) across all gillnet fisheries are estimated at $1.009 million. This represents less than 2 percent of total ex-vessel revenues for the entities involved in these fisheries. From this perspective, this final rule would not appear to have a significant effect on fishermen. However, certain sub-sectors or fisheries are expected to be more severely impacted. Impacts range from no expected impacts on participants in the large mesh gillnet fishery in North Carolina State waters due to the night fishing restrictions, to an estimated 14 percent reduction in ex-vessel revenues for participants in the Winter Mixed Virginia oceanic large mesh gillnet fishery due to the night fishing restrictions. An estimated 11 percent reduction in ex-vessel revenues is expected for participants in the Delaware-Maryland-New Jersey Summer northern oceanic medium and large mesh gillnet fishery due to the fishing proximity and return to shore provisions of the final rule. In total, these two sub-sectors encompass approximately 13 percent of identified entities that will be affected by the rule.

Six alternatives to the final rule were considered. Alternative 1 would allow status quo operation of the fisheries, thereby eliminating all adverse economic impacts. This alternative would not, however, achieve the required reduction in the incidental mortality and serious injury of bottlenose dolphin by commercial fishing gear and would not meet the objectives of the BDTRP. The other five alternatives would achieve the objectives of the BDTRP.

Alternative 2 would impose additional restrictions on the beach seine fishery, require rolling closures of the large mesh gillnet fishery in North Carolina and Virginia, and specify gear marking requirements; thereby, resulting in greater adverse economic impacts than the final rule.

Alternatives 3 through 5 were analyzed to, respectively, prohibit all ocean gillnet fishing within 3 km from shore, limit all ocean gillnet fishing to at most 12 consecutive hours, and prohibit all ocean gillnet fishing in State waters. Each of these alternatives is projected to result in greater direct adverse economic impacts on small entities than the final rule. These three alternatives would also impose additional gear marking requirements, notably on participants in the Atlantic blue crab trap/pot fishery, and would substantially increase costs over those induced by the final rule.

Alternative 6 would add a daily hauling requirement and mandatory bycatch certification training to the measures in this final rule. This requirement would constitute a more restrictive action and would not reduce the adverse impacts of the final rule. This alternative would also impose additional, but unquantifiable, costs on fishery participants as a result of the mandatory bycatch certification training. These costs would include the direct costs for participation in the training, potential time taken away from fishing or other revenue generating activities in order to receive the training, and potential lost fishing revenues if fishing activities are restricted due to failure to receive the certification. This alternative would also impose additional gear marking requirements, notably on participants in the Atlantic blue crab trap/pot fishery, which would substantially increase costs over those induced by the final rule.

Among all the alternatives considered that achieve the required reduction in the incidental mortality and serious injury by commercial fishing gear of dolphins, the final rule minimizes the potential negative economic impacts.

This final rule does not impose any additional reporting, recordkeeping, or compliance requirements.

The proposed rule contained collection-of-information requirements subject to the Paperwork Reduction Act (PRA) because of the proposed gear marking requirements. The requirement was submitted to the Office of Management and Budget (OMB) for approval. However, because the final rule is not finalizing the gear marking requirements as proposed, this final rule no longer contains collection-of-information requirements subject to the PRA.

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials of the affected state and local governments through a letter mailed to those officials on November 23, 2004. Specifically, the letters were sent to the states of New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. The letter described NMFS' position supporting the need to issue this regulation; specifically, it described the need to reduce serious injury and mortality of dolphins incidental to commercial fisheries. The state of Delaware raised concerns over the gear marking requirements, as proposed. However, since this final rule no longer includes the gear marking requirements, the stated concern was addressed.

An ESA section 7 consultation was conducted on the proposed rule. NMFS determined that the proposed measures may affect but are not likely to adversely affect listed species under NMFS' jurisdiction that may be present in the action area. Because this final rule differs from the proposed action, NMFS conducted a new section 7 consultation, and also found that this final action may affect but is not likely to adversely affect listed species under NMFS' jurisdiction. NMFS expects this rule to be beneficial to listed species because it is expected to keep fishing effort from increasing in some areas, and may even decrease fishing effort in some cases. Therefore, all the ESA requirements were addressed.

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**List of Subjects**

*50 CFR Part 223*

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

*50 CFR Part 229*

Administrative practice and procedure, Confidential businessinformation, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 19, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 223 and 50 CFR part 229 are amended as follows:

## PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

■ 2. In § 223.206, paragraph (d)(8) is revised to read as follows:

### § 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(8) *Restrictions applicable to large mesh gillnet fisheries in the mid-Atlantic region.* No person may fish with or possess on board a boat, any gillnet with a stretched mesh size 7–inches (17.8 cm) or larger, unless such gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6–inches (15.2 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following area:

(i) Waters north of 33° 51.0′ N. (North Carolina/South Carolina border at the coast) and south of 35° 46.0′ N. (Oregon Inlet) at any time;

(ii) Waters north of 35° 46.0′ N. (Oregon Inlet) and south of 3° 22.5′ N. (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36° 22.5′ N. (Currituck Beach Light, NC) and south of 37° 34.6′ N. (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37° 34.6′ N. (Wachapreague Inlet, VA) and south of 37° 56.0′ N. (Chincoteague, VA) from April 16 through January 14.

* * * * *

## PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.2, the introductory paragraph is revised to read as follows, and the definitions ''Fishing or to fish,'' ''Seine,'' ''Sunrise,'' and ''Sunset'' are added in alphabetical order to read as follows:

### § 229.2 Definitions.

In addition to the definitions contained in the Act and § 216.3 of this chapter, and unless otherwise defined in this chapter, the terms in this chapter have the following meaning:

* * * * *

*Fishing or to fish* means any commercial fishing operation activity that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

* * * * *

*Seine* means a net that fishes vertically in the water, is pulled by hand or by power, and captures fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used. In some regions, the net is typically constructed with a capture bag in the center of the net which concentrates the fish as the net is closed.

* * * * *

*Sunrise* means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

*Sunset* means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

* * * * *

■ 3. In § 229.3, paragraph (r) is added to read as follows:

### § 229.3 Prohibitions.

* * * * *

(r) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet gear from the areas specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

■ 4. In subpart C, § 229.35 is added to read as follows:

### § 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan to reduce incidental mortality and serious injury of the western North Atlantic coastal bottlenose dolphin stock in specific Category I and Category II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are identified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) *Definitions.* In addition to the definitions contained in the Act, § 216.3 and § 229.2 of this chapter, the terms defined in this section shall have the following definitions, even if a contrary definition exists in the Act, § 216.3, or § 229.2:

*Beach* means landward of and including the mean low water line.

*Beach/water interface* means the mean low water line.

*Large mesh gillnet* means a gillnet constructed with a mesh size greater than or equal to 7–inches (17.8 cm) stretched mesh.

*Medium mesh gillnet* means a gillnet constructed with a mesh size of greater than 5–inches (12.7 cm) to less than 7–inches (17.8 cm) stretched mesh.

*New Jersey, Delaware, and Maryland State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 40o 30′ N. (New York/New Jersey border at the coast) and on the south by 38o 01.6′ N. (Maryland/Virginia border at the coast).

*Night* means any time between one hour after sunset and one hour prior to sunrise.

*Northern North Carolina State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 36° 33′ N. (Virginia/North Carolina border at the coast) and on the south by 34° 35.4′ N. (Cape Lookout, North Carolina).

*Northern Virginia State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles

(5.56 km) of shore, bounded on the north by 38° 01.6′ N. (Virginia/Maryland border at the coast) and on the south by 37° 07.23′ N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth).

*Small mesh gillnet* means a gillnet constructed with a mesh size of less than or equal to 5–inches (12.7 cm) stretched mesh.

*South Carolina, Georgia, and Florida waters* means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, between 33° 52′ N. (North Carolina/South Carolina border at the coast) and the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

*Southern North Carolina State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34° 35.4′ N. (Cape Lookout, North Carolina) and on the south by 33° 52′ N. (North Carolina/South Carolina border at the coast).

*Southern Virginia State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 37° 07.23′ N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth) and on the south by 36° 33′ N. (Virginia/North Carolina border at the coast).

(c) *Regulated waters.* The regulations in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except for the waters identified in § 229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37° 52′ N. 75° 24.30′ W. to 37° 11.90′ N. 75° 48.30′ W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(d) *Regional management measures*—(1) *New Jersey, Delaware, and Maryland State waters*''(i) *Medium and large mesh.* From June 1 through October 31, in New Jersey, Delaware, and Maryland State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(2) *Virginia state waters*—(i) *Medium and large mesh.* From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(3) *Southern Virginia State waters*—(i) *Large mesh gillnets.* From November 1 through December 31, in Southern Virginia State waters, no person may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night.

(ii) [Reserved]

(4) *Northern North Carolina State waters*—(i) *Small mesh gillnets.* From May 1 through October 31, in Northern North Carolina State waters, no person may fish with any small mesh gillnet gear longer than 1,000 feet (304.8 m).

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2009.

(iii) *Large mesh gillnets.* (A) From April 15 through December 15, in Northern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Northern North Carolina State waters, no person may fish with any large mesh gillnet without tie-downs at night.

(5) *Southern North Carolina State waters*—(i) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2009.

(ii) *Large mesh gillnets.* (A) From April 15 through December 15, in Southern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Southern North Carolina State waters, no person may fish, possess on board unless stowed, or fail to remove from the water, any large mesh gillnet at night.

(6) *South Carolina, Georgia, and Florida waters*—(i) *Gillnets.* Year-round, in South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical miles (0.46 km) of the closest portion of the gillnet. Gear shall be removed from the water and stowed on board the vessel before the vessel returns to port.

(ii) [Reserved]

[FR Doc. 06–3909 Filed 4–25–06; 8:45 am]

BILLING CODE 3510–22–S

Federal Register

Wednesday,
April 26, 2006

# Part III

# Department of Education

## Special Demonstration Programs—Model Demonstrations for Assistive Technology Reutilization; Notice

## DEPARTMENT OF EDUCATION

### Special Demonstration Programs—Model Demonstrations for Assistive Technology Reutilization

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed priorities.

**SUMMARY:** The Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS) proposes priorities under the Special Demonstration Programs. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2006 and in later years. The purpose of Proposed Priority 1 is to support projects that will develop models of statewide assistive technology (AT) device reutilization systems to meet the AT needs of individuals with disabilities. The purpose of Proposed Priority 2 is to support the establishment of a National Device Reutilization Coordination and Technical Assistance Center (Center) to assist grantees funded under Proposed Priority 1 with the establishment or expansion of their statewide AT device reutilization systems. This Center would disseminate information about promising practices and successful models for AT device reutilization systems, facilitate information exchange among grantees, and address AT device reutilization issues at the national level. While funding for projects under Proposed Priority 1 would be for a three-year period only, this Center would be funded for five years in order to conduct follow-up activities.

**DATES:** We must receive your comments on or before May 26, 2006.

**ADDRESSES:** Address all comments about these proposed priorities to Jeremy Buzzell, U.S. Department of Education, 400 Maryland Avenue, SW., room 5025, Potomac Center Plaza, Washington, DC 20202–2800. If you prefer to send your comments through the Internet, use the following address: *Jeremy.Buzzell@ed.gov.*

You must include the term ''Model Demonstrations for Assistive Technology Reutilization'' in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Buzzell. Telephone: (202) 245–7319 or via Internet: *Jeremy.Buzzell@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8352.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Invitation to Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 5025, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

### Priorities

*Background:* Cost is cited as a major barrier that prevents individuals with disabilities from obtaining needed AT devices. One way to reduce the cost of AT devices is through reutilization of AT devices when current owners no longer have a use for them. There are programs in many States that exchange or recycle, refurbish, and redistribute used AT devices at low or no cost to consumers. Many of these programs are supported under the Assistive Technology Act of 1998, as amended (AT Act), while others are supported with independent funds by organizations that provide services to individuals with disabilities. There are limited data available on those programs, but the data that exist show that these programs have had some success in increasing the number of individuals who obtain needed AT.

*Proposed Priority 1—Model Demonstrations for Establishing or Expanding AT Device Reutilization Systems*

This priority supports projects that propose model demonstrations for the establishment or expansion of statewide AT reutilization programs in a State, including the replication of a successful existing AT device reutilization system from another State. Model AT device reutilization projects funded under this priority must—

(a) Establish an AT device reutilization program, expand an existing AT device reutilization program, or coordinate a partnership of existing AT device reutilization programs to create a statewide AT device reutilization system designed to meet the needs of individuals with disabilities regardless of type of disability or type of equipment to be reutilized;

(b) Collaborate with other providers of AT services in the State, including providers of AT device demonstrations, AT device loans, and alternative financing;

(c) Provide and implement a plan for sustaining the AT device reutilization system beyond Federal funding;

(d) Provide the Rehabilitation Services Administration (RSA) with input in the development of a standard data collection instrument;

(e) Use intake interviews and follow-up surveys to determine if the recipients of AT devices provided by the system could have obtained the devices from another source;

(f) Determine cost savings by comparing the prices paid by recipients of the AT devices to the prices of the same, or similar, AT devices if purchased new;

(g) Collect data as required to address performance measures identified by RSA; and

(h) Demonstrate in their applications that funds would be used to supplement, not supplant, funds received under the AT Act, if the statewide AT device reutilization system is operated by a grantee or subcontractor funded under the AT Act.

*Proposed Priority 2—Model Demonstrations for a National Device Reutilization Coordination and Technical Assistance Center*

This priority supports a National Device Reutilization Coordination and Technical Assistance Center (Center) that will provide technical assistance to, and coordinate the activities of, grantees funded under the *Model Demonstrations for Establishing or Expanding AT Device Reutilization Systems* (Model Demonstrations) priority described elsewhere in this notice.

1. The Center funded under this priority must—

(a) Assist model AT device reutilization projects funded under the Model Demonstrations priority with the development or expansion of their AT device reutilization systems or models by disseminating information about promising practices and successful models for reutilization programs and facilitating information exchange among grantees;

(b) Conduct follow-up activities that are designed to enable AT device reutilization programs to continue beyond the three years of Federal funding;

(c) Address reutilization issues at the national level;

(d) Provide technical assistance to the statewide AT device reutilization systems funded under the Model Demonstrations priority in order to improve AT device reutilization practices;

(e) Coordinate the activities of the statewide AT device reutilization systems funded under the Model Demonstrations priority;

(f) Establish a national network of statewide AT device reutilization systems funded under the Model Demonstrations priority 1 and supported by other entities operating AT device reutilization systems; and

(g) Collect data as required to address performance measures identified by RSA.

2. The Center's activities in support of the national network must—

(a) Promote consistency in quality of services across statewide AT reutilization systems funded under the Model Demonstrations priority;

(b) Encourage interstate activities among the statewide AT device reutilization systems funded under the Model Demonstrations priority;

(c) Address issues on the national level, such as building relationships among AT device vendors and manufacturers and programs or working on liability and reimbursement issues;

(d) Nationally market and promote AT device reutilization to individuals with disabilities and other stakeholders in the field of AT; and

(e) Forge partnerships among organizations that support AT device reutilization and report to RSA on the results of these activities in terms of changes in practices or policies of the participating entities (including its own).

**Executive Order 12866**

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Summary of Potential Costs and Benefits**

The potential costs associated with these proposed priorities are minimal, while the benefits are significant. Grantees will increase the number of individuals with disabilities who obtain the AT they need. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Applicable Program Regulations:* 34 CFR part 373.

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(Catalog of Federal Domestic Assistance Number 84.235V Special Demonstration Programs)

Program Authority: 29 U.S.C. 773(b).

Dated: April 21, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 06–3943 Filed 4–25–06; 8:45 am]

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**Commodity Credit Corporation**

Export programs:
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