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Rules and Regulations

Federal Register
Vol. 71, No. 114
Wednesday, June 14, 2006

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Actions Filed by Administrative Law Judges

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its regulation governing actions filed by an administrative law judge (ALJ) under 5 U.S.C. 7521 to repeal the standard for establishing a constructive removal under the statute that was formerly incorporated in the regulation. The standard for establishing a constructive removal is addressed in the Board's case law. The amended regulation provides procedural guidance for ALJ-initiated actions alleging violation of section 7521.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov*.

SUPPLEMENTARY INFORMATION: The Board added 5 CFR 1201.142 to its regulations governing actions under 5 U.S.C. 7521 to cover actions filed by an ALJ rather than an agency. As promulgated in 1997, the regulation codified the Board's holding in *In re Doyle*, 29 M.S.P.R. 170 (1985), that a sitting ALJ may be constructively removed under 5 U.S.C. 7521 by agency actions that interfere with the ALJ's qualified decisional independence. In *Tunik* v. *Social Security Administration*, 93 M.S.P.R. 482 (2003), the Board overruled *Doyle* and held that to establish a constructive removal the ALJ must have left the position of ALJ and must show that the decision to leave was involuntary under the test for involuntariness used in appeals under 5 U.S.C. 7512. In a consolidated appeal reviewing *Tunik* and cases following it, the U.S. Court of Appeals for the Federal Circuit approved the Board's conclusion that the plain language of section 7521 can reasonably be read to apply only to cases of actual separation from employment as an ALJ. However, the court found that, because 5 CFR 1201.142 was issued pursuant to the notice-and-comment requirements of 5 U.S.C. 553, the Board lacked authority to overrule the regulation in an adjudication. The court stated that its conclusion did not foreclose the Board from repealing the rule in accordance with section 553(b). *Tunik* v. *Merit Systems Protection Board*, 407 F.3d 1326 (Fed. Cir. 2005).

Accordingly, the Board proposed this amendment to section 1201.142 and published it for comments at 70 FR 48081 (August 16, 2005). The time for comments was subsequently extended to November 25, 2005, at 70 FR 61750 (October 16, 2005). The Board has received comments from two associations, an agency and two individuals. After careful consideration of the comments received, the Board is adopting the rule as proposed.

1. Four of the commenters urged the Board to retain the *Doyle* standard permitting constructive removal actions by sitting ALJs as necessary to protect the their decisional independence and the due process rights of claimants before them. Two of the commenters argued more specifically that under the amended rule punitive actions could be taken against ALJs in order to intimidate them from taking actions or to get them to alter their decisions.

The Board does not find this argument persuasive. Congress has protected the independence of ALJs by enacting the statutory requirement that there be an MSPB finding of good cause before a removal from the position of ALJ (or other specified adverse action) can be taken. Since the Board's case law precludes a finding of good cause under section 7521 for an action based on how an ALJ decides a case, this protection permits ALJs to resist the most serious agency pressures that could undermine their independence. The Board sees no justification for extending its jurisdiction to provide additional protection beyond what Congress has provided through the authority given to the Board in the statute.

2. One commenter suggested that the amended regulation is inconsistent with the definition of removal under section 7521 found in 5 CFR 930.202(f) because under that regulation of the Office of Personnel Management, the definition includes reassignment to a non-ALJ position.

This suggestion is based on a mistake. The amended regulation requires involuntary separation from the position of ALJ, not separation from the civil service. Reassignment to a non-ALJ position is clearly covered by the new standard, which is therefore not inconsistent with the definition in § 930.202(f).

3. One commenter suggested that the amended rule is unnecessary because the Board's decisions applying the *Doyle* standard have not found a constructive removal in cases involving routine management actions. This commenter suggested that the *Doyle* standard should be retained because it has deterred agency interference with ALJ independence. The commenter also suggested that under the new standard, sitting ALJs may, instead, challenge interference with their independence through actions based on the First Amendment in district court, with an adverse effect on judicial economy due to the loss of the Board's expertise in the decision of those cases.

The Board finds that the fact that its case law under the *Doyle* standard is largely made up of nonmeritorious cases is not a reason for retaining the old standard, nor does it show that the old standard has deterred improper agency actions. Moreover, in *Tunik* the court approved the Board's determination that it was unlikely that in enacting section 7521 Congress intended to require agencies to obtain a good cause finding from the Board before taking such routine actions as assigning cases and implementing training requirements. *Tunik*, 407 F.3d at 1340. The Board finds that, to whatever extent the First Amendment rights of ALJs are actionable in district court, it has no bearing on the Board's interpretation of section 7521.

4. One commenter suggested that the *Doyle* standard should be retained in order to permit sitting ALJs to claim constructive removal based on alleged

violations of the case assignment rotation requirement in 5 U.S.C. 3105.

The Board finds that this suggestion fails to state a persuasive objection to the amendment of its regulation since the revised standard would permit consideration of an ALJ's involuntary resignation claim that is based on the agency's improper interference with his decisionmaking by assigning cases out of rotation.

5. One commenter supports the proposed amendment and urges the Board to provide upon issuance of the amended regulation that it will be applicable to pending cases.

The Board finds that retroactive application of the amended regulation would be contrary to the court's decision in *Tunik*, which held that the cases in that consolidated appeal were subject to the standard stated in the former regulation because it could not be repealed in an adjudication. Under *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988), the Board must have express statutory authority to make a substantive rule retroactive, authority which the Board does not have. The amended regulation that the Board is issuing is such a rule because it repeals the substantive standard for constructive removal stated in the old regulation and makes effective the standard for such a removal now contained in the Board's case law.

List of Subjects in 5 CFR Part 1201

Administrative personnel, Actions against administrative law judges, Actions filed by administrative law judges.

■ For the reasons set forth in the Preamble, the MSPB is amending 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for 5 CFR part 1201 is revised to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Accordingly, the Board revises 5 CFR 1201.142 to read as follows:

§ 1201.142 Actions filed by administrative law judges.

An administrative law judge who alleges a constructive removal or other action by an agency in violation of 5 U.S.C. 7521 may file a complaint with the Board under this subpart. The filing and serving requirements of 5 CFR 1201.37 apply. Such complaints shall be adjudicated in the same manner as agency complaints under this subpart.

Dated: June 8, 2006.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. E6–9239 Filed 6–13–06; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[Doc. No. FV–05–704–IFR]

Watermelon Research and Promotion Plan; Redistricting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on changing the boundaries of all seven districts under the Watermelon Research and Promotion Plan (Plan) to apportion producer and handler membership on the National Watermelon Promotion Board (Board). This will make all districts equal according to the previous three-year average production records. Pursuant to the provisions of the Plan and regulations, these changes are based on a review of the production and assessments paid in each district and the amount of watermelon import assessments, which the Plan requires at least every five years.

DATES: Effective June 15, 2006. Comments must be received by July 14, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; fax (202) 205–2800; e-mail: *daniel.manzoni@usda.gov*; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at: *http://www.ams.usda.gov/fv/rpb.html*.

FOR FURTHER INFORMATION CONTACT: Daniel Rafael Manzoni, Research and Promotion Branch, FV, AMS, USDA, Room 2535–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–5951 or (888) 720–9917 (toll free); fax: (202) 205–2800; or e-mail *daniel.manzoni@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under the Watermelon Research and Promotion Plan (Plan) [7 CFR part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act (Act) [7 U.S.C. 4901–4916].

Executive Orders 12886

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers, producer-packers, handlers, and importers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not established in accordance with law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on the small producers, handlers, and importers that would be affected by this rule.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $6.5 million. Under these definitions, the majority of the producers, handlers,

and importers that would be affected by this rule would be considered small entities. Producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt.

According to the Board, there are approximately 1,301 producers, 442 handlers, and 346 importers who are eligible to serve on the Board.

The Plan requires producers to be nominated by producers, handlers to be nominated by handlers, and importers to be nominated by importers. This would not change. Because some current members are in states or counties which would be moved to other districts under this rule, one handler vacancy in the new District 4, one producer member vacancy in the new Districts 5, and one handler member vacancy in the new District 2 is created with this rule change. Nomination meetings will be held in the new districts to fill these vacancies.

The overall impact is favorable because the new district boundaries provide more equitable representation for the producers and handlers who pay assessments in the various districts. The current importer membership will not change.

The Board considered several alignments of the districts in an effort to provide balanced representation for each district. The Board selected the alignment described in this rule as it provides proportional representation on the Board of producers, handlers, and importers.

This rule does not impose additional recordkeeping requirements on first handlers, producers, or importers of watermelons because the number of nominees would remain unchanged.

There are no federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment.

Background

Under the Plan, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for watermelons. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 pounds of watermelons or more per year. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service and Border Protection. This action will not have any impact on the assessment rates paid by producers, handlers, and importers.

Membership on the Board consists of two producers and two handlers for each of the seven districts established by the Plan, at least one importer, and one public member. The Board currently has 35 members: 14 producers, 14 handlers, 6 importers, and 1 public member.

The seven current districts were established in 2001. They are:

District 1—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

District 2—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

District 3—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

District 4—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

District 5—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

District 6—Texas.

District 7—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

Pursuant to section 1210.320(c) of the Plan, the Board shall review the seven districts to determine whether realignment of the districts is necessary, every five years. When making a review, the Plan specifies that the Board should consider factors such as the most recent three years of USDA production reports or Board assessment reports if USDA production reports are unavailable, shifts and trends in quantities of watermelons produced, and any other relevant factors. Any realignment should be recommended by the Board at least six months prior to the date of the call for nominations and should become effective at least 30 days prior to this date.

Pursuant to section 1210.320 (e), the Secretary shall review importer representation every five years. According to the Plan, the Secretary shall review a three-year average of watermelon import assessments and adjust, to the extent practicable, the number of importers on the Board.

The Board appointed a subcommittee to begin reviewing the U.S. districts and to determine whether realignment was necessary based on production and assessment collections in the current districts. During the review, as prescribed by the Plan, the subcommittee reviewed USDA's Annual Crop Summary reports for 2002 through 2004, which provide figures for the top 17 watermelon producing states, and the Board's assessment collection records for 2002 through 2004. Both sets of data showed similar trends in production among the various states. However, the Board used the assessment reports because USDA's Annual Crop Summary reports were available for only 17 of the

34 states in which watermelons are produced.

The subcommittee recommended to the Board that the boundaries of all seven districts be changed in order for there to be an equal amount of assessments paid by producers and handlers in the districts.

The subcommittee also provided information that the average annual percentage of assessments paid by importers continued to represent 20 percent of the Board's assessment income during 2002–2004. Because there was no change in the assessments on imports, it is not necessary to change the number of importer representatives on the Board. Therefore, the number of importer Board members remains at six.

Subsequently, the realignment was approved by Board at its February 22, 2005, meeting. Under the realignment, each district would represent, on average, 14 percent of total U.S. production. The composition of the Board would remain at a total of 35 members: 14 producers, 14 handlers, 6 importers, and 1 public member.

Therefore, this rule realigns the districts as follows:

District 1—The Florida counties of Brevard, Broward, Charlotte, Citrus, Collier, Dade, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Marion, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia.

District 2—The Florida counties of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington, and the Georgia counties Early, Baker, Miller, Mitchell, Colquitt, Thomas, Grady, Decatur, Seminole, and the states of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, and Virginia.

District 3—The Georgia counties not included in District two and the state of South Carolina.

District 4—The States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Illinois, Missouri, Michigan, Indiana, Ohio, Kentucky, West Virginia, Maryland, New Hampshire, Maine, New Jersey, New York, Pennsylvania, Massachusetts, Rhode Island, Delaware, Vermont, Wisconsin, Connecticut, and Washington, DC.

District 5—The States of Alaska, Hawaii, Nevada, Oregon, and Washington and all of the counties in the state of California except for those California counties included in District Seven.

District 6—The counties in the state of Texas, except for those counties in Texas included in District Seven.

District 7—The counties in the state of Texas; Dallam, Sherman, Hanaford, Ochiltree, Lipscomb, Hartely, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childness, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockely, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, the states of New Mexico, Arizona, Utah, Colorado, Idaho, Montana, and Wyoming, and the following counties in California; San Bernardino, Riverside, San Diego, and Imperial.

Under this realignment: (1) Eighteen Florida counties are moved from District 2 to District 1; (2) Alabama, Arkansas, Louisiana, Mississippi, and Tennessee are moved from District 3 to District 2; (3) North Carolina, Virginia and Oklahoma are moved from District 4 to District 2; (4) Georgia counties Early, Baker, Miller, Colquitt, Thomas, Grady, Decatur, and Seminole are moved from District 3 to District 2; (5) Montana, Idaho, Wyoming, Utah and Colorado are moved from District 5 to District 7; (6) Texas counties Dallam, Sherman, Hanaford, Ochiltree, Lipscomb, Hartely, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carlson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childness, Bailey, Lamb, Hale, Flyod, Motley, Cottle, Cochran, Hockely, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, and Stonewall, are moved from District 6 to District 7; and (7) California counties Los Angeles and Orange are moved from District 7 to District 5.

Due to the re-alignment of the districts the following vacancies are created: one handler vacancy in District 4, one handler vacancy in District 2, and one producer vacancy in the District 5. Current Board members would be affected because their states or counties would be moved to other districts. Nomination meetings will be held as soon as possible in the new districts to fill the vacancies.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after the publication in the **Federal Register** because the Board adjustment provided for in this interim final rule needs to be effective as soon as possible in order to complete the 2006 Board appointments. For the same reason, a 30-days comment period is deemed appropriate.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

■ For the reasons set forth in the preamble, part 1210, Chapter XI of Title 7 is amended as follows:

■ 1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Subpart C—Rules and Regulations

■ 2. Section 1210.501 is revised to read as follows:

§ 1210.501 Realignment of districts.

Pursuant to § 1210.320(c) of the Plan, the districts shall be as follows:

District 1—The Florida counties of Brevard, Broward, Charlotte, Citrus, Collier, Dade, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Marion, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia.

District 2—The Florida counties of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington, and the Georgia counties Early, Baker, Miller, Mitchell, Colquitt, Thomas, Grady, Decatur, Seminole, and the states of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, and Virginia.

District 3—The Georgia counties not included in District two and the state of South Carolina.

District 4—The States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Illinois, Missouri, Michigan, Indiana, Ohio, Kentucky, West Virginia, Maryland,

New Hampshire, Maine, New Jersey, New York, Pennsylvania, Massachusetts, Rhode Island, Delaware, Vermont, Wisconsin, Connecticut, and Washington, DC.

District 5—The States of Alaska, Hawaii, Nevada, Oregon, and Washington and all of the counties in the state of California except for those California counties included in District Seven.

District 6—The counties in the state of Texas, except for those counties in Texas included in District Seven.

District 7—The counties in the state of Texas; Dallam, Sherman, Hanaford, Ochiltree, Lipscomb, Hartely, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childness, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockely, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, the states of New Mexico, Arizona, Utah, Colorado, Idaho, Montana, and Wyoming, and the following counties in California; San Bernardino, Riverside, San Diego, and Imperial.

Dated: June 8, 2006.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E6–9234 Filed 6–13–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE247; Special Conditions No. 23–187–SC]

Special Conditions: Thielert Aircraft Engines; Piper PA 28–161 Cadet, Warrior II and Warrior III Series Airplanes; Installation of Thielert TAE–125–01 Aircraft Diesel Engine for Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Thielert Aircraft Engines, GmbH, Lichtenstein, Germany for a supplemental type certificate for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. The supplemental type certificate for these airplanes will have a novel or unusual design feature associated with the installation of an aircraft diesel engine that uses an electronic engine control system instead of a mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is: June 7, 2006. Comments must be received on or before July 14, 2006.

ADDRESSES: Comments on the special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE247, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE247. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4135, fax: 816–329–4090.

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE247.'' The postcard will be date stamped and returned to the commenter.

Background

On February 11, 2002, Thielert Aircraft Engines applied for a supplemental type certificate for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. The supplemental type certificate will allow Thielert Aircraft Engines to install a Thielert Aircraft engine (TAE 125–01 Aircraft Diesel Engine (ADE)) that is equipped with an electronic engine control system with full authority capability in these airplanes.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.101, Thielert Aircraft Engines must show that the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, as changed, continues to meet the applicable provisions of regulations incorporated by reference in the original certification basis of the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, as listed on Type Certificate No. 2A13; exemptions, if any; and the special conditions adopted by this rulemaking action. The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes were originally certified under Part 3 of the Civil Air Regulations.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 3; 14 CFR, part 23) do not contain adequate or appropriate safety standards for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the certification basis for the supplemental type certification basis in accordance with § 21.101. Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other

models that are listed on the same type certificate to incorporate the same novel or unusual design features, the special conditions would also apply under the provisions of § 21.101.

Novel or Unusual Design Features

The Thielert Aircraft Engines modified Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes will incorporate a novel or unusual design feature, an engine that includes an electronic control system with Full Authority Digital Engine control (FADEC) capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved High Intensity Radiated Fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Thielert Aircraft Engines modified Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes will perform critical functions, provisions for protection from the effects of HIRF should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, the Joint Aviation Authorities (JAA), and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a FADEC is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR, part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Thielert Aircraft Engines modified Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–49.

Applicability

As discussed above, these special conditions are applicable to the Thielert Aircraft Engines modified Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. Should Thielert Aircraft Engines apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate as the Thielert Aircraft Engines modified Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes to incorporate the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Thielert Aircraft Engines modified Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

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

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200

Frequency	Field strength (volts per meter)	
	Peak	Average
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

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

or, (2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–49. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

With respect to compliance with § 23.1309(e), the levels required for compliance shall be at the levels for catastrophic failure conditions.

Issued in Kansas City, Missouri on June 7, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9228 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE242; Special Conditions No. 23–182–SC]

Special Conditions: AmSafe, Inc.; Approved Model List; Installation of AmSafe Inflatable Restraints in Normal and Utility Category Non-23.562 Certified Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the installation of an AmSafe, Inc., Inflatable Two-, Three-, Four- or Five-Point Restraint Safety Belt with an Integrated Airbag Device on various airplane models. These airplanes, as modified by AmSafe, Inc., will have a novel or unusual design feature(s) associated with the lap belt or shoulder harness portion of the safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* The effective date of these special conditions is June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Mark James, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4137, fax 816–329–4090 e-mail *mark.james@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2005, AmSafe, Inc., Aviation Inflatable Restraints (AAIR) Division, 1043 North 47th Avenue, Phoenix, AZ 85043, applied for a supplemental type certificate for the installation of an inflatable restraint in various airplane models certificated before the dynamic structural requirements as specified in 14 CFR, part 23, § 23.562, took effect.

The inflatable restraint system is either a two-, three-, four-, or five-point safety belt restraint system consisting of a shoulder harness and a lap belt with an inflatable airbag attached to either the lap belt or the shoulder harness. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be made available on the pilot, co-pilot, and passenger seats of these airplanes.

In the event of an emergency landing, the airbag will inflate and provide a protective cushion between the occupant's head and structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbag is integrated into the lap or shoulder belt. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the airplanes' original certification basis. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot, or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AmSafe, Inc., must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. It is likely that the potential for inadvertent

deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Due to the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AmSafe, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the retrofitted airplane occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection in the event of an emergency landing. In the event of a deployment, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harness. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant during emergency landing conditions as specified in the original certification basis. The seats of the various airplane models were certificated prior to the dynamic structural requirements of § 23.562. Therefore, the emergency landing loads conditions identified in the original certification basis of the airplane must be used to satisfy this requirement. Compliance will be demonstrated using the test condition specified in the original certification basis. It must also be shown that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event. Therefore, the test crash pulses identified in § 23.562 must be used to satisfy this requirement, although, the peak ''G'' may be reduced to a level meeting the original certification requirements of the aircraft. Testing to these pulses will demonstrate that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, AmSafe, Inc., can establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

It is possible that an inflatable restraint will be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require that unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. As an alternative, AmSafe, Inc., may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the various model airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gases may accumulate in the event of airbag deployment. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the inflator.

The airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Finally, there is an elevated risk associated with inadvertent deployment for agricultural airplanes, which are type certificated under the restricted category. This is due to the unique operating environment and low altitude flying of these airplanes. The FAA is still trying to understand the risk and benefit associated with the installation of these systems into restricted category airplanes in general and agricultural airplanes specifically. Therefore, the installation of the AAIR system is currently prohibited in agricultural airplanes type certificated under the restricted category.

Special conditions for the installation of AAIR systems on other Non-23.562 certificated airplanes have been issued and no substantive public comments were received. Since the same special conditions were issued multiple times for different model airplanes with no substantive public comments, the FAA began issuing direct final special conditions with an invitation for public comment. This was done to eliminate the waiting period for public comments, and so AmSafe, Inc., could proceed with the project, since no comments were expected.

These previous special conditions were issued for a single model airplane or for variants of a model from a single airplane manufacturer, and required dynamic testing of each AAIR system installation for showing compliance. The AML Supplemental Type Certificate sought by AmSafe, Inc., has numerous airplane models and manufacturers. Since AmSafe, Inc., has previously demonstrated by dynamic testing, and has the supporting data, that the Electronics Module Assembly (EMA) and the inflator assembly will function as intended in a simulated dynamic emergency landing, it is not necessary to repeat the test for each airplane model shown in these special conditions.

This is a departure from the method of showing compliance used in the prior special conditions. Testing is required to show compliance, but it is not necessary to repeat the testing for each airplane installation. Existing test data

is adequate for showing compliance for other airplanes where the AAIR equipment is identical and the installation is nearly identical. Since this is a substantial change in the philosophy of showing compliance, it was prudent to give the public time to comment on these special conditions. We published a notice of proposed special conditions No. 23–06–02–SC on April 20, 2006 (71FR 20368). The comment period closed on May 22, 2006.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, AmSafe, Inc., must show that the affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in the Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis'' and can be found in the Type Certificate Numbers listed below. The following models are covered by this special condition:

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS

Make	Model	TC holder	TCDS	Certification basis
Aerostar	PA–60–600 (Aerostar 600) PA–60–601 (Aerostar 601) PA–60–601P (Aerostar 601P) PA–60–602P (Aerostar 602P) PA–60–700P (Aerostar 700P)	Aerostar Aircraft Corporation.	A17WE Revision 22.	14 CFR Part 23.
All American	10A	All American Aircraft, Inc	A–792	CAR 3.
American Champion (Champion).	402	American Champion Aircraft Corp.	A3CE Revision 5	CAR 3.
American Champion (Bellanca) (Champion) (Aeronca).	7AC, 7ACA, 7EC, 7GCB, S7AC, S7EC, 7GCBA (L–16A), 7BCM, 7ECA, 7GCBC (L–16B), 7CCM, 7FC, 7HC, S7CCM, 7GC, 7JC, 7DC, 7GCA, 7KC, S7DC, 7GCAA, 7KCAB.	American Champion Aircraft Corp.	A–759 Revision 67	CAR 4a.
American Champion (Bellanca) (Trytek) (Aeronca)	11AC, S11AC, 11BC, S11BC	American Champion Aircraft Corp.	A–761 Revision 17	CAR 4a.
American Champion (Bellanca) (Trytek) (Aeronca)	11CC, S11CC	American Champion Aircraft Corporation.	A–796 Revision 14	CAR 3.
Varga (Morrisey)	2150, 2150A, 2180	Augustair, Inc	4A19 Revision 9	CAR 3.
Bellanca	14–13, 14–13–2, 14–13–3, 14–13–3W	Bellanca Aircraft Corporation.	A–773 Revision 10	CAR 4a.
Bellanca	14–9, 14–9L	Bellanca Aircraft Corporation.	TC716	CAR 4a.
Cessna	310, 310J, 310A (USAF U–3A), 310J–1, 310B, E310J, 310C, 310K, 310D, 310L, 310E (USAF U–3B), 310N, 310F, 310P, 310G, T310P, 310H, 310Q, E310H, T310Q, 310I, 310R, T310R.	Cessna Aircraft Company	3A10 Revision 62	CAR 3.
Cessna	321 (Navy OE–2)	Cessna Aircraft Company	3A11 Revision 6	CAR 3.
Cessna	172, 172I, 172A, 172K, 172B, 172L, 172C, 172M, 172D, 172N, 172E, 172P, 172F (USAF T–41A), 172Q, 172G, 172H, (USAF T–41A).	Cessna Aircraft Company	3A12 Revision 73	CAR 3.
Cessna	175, 175A, 175B, 175C, P172D, R172E (USAF T–41B) (USAF T–41C and D), R172F (USAF T–41D), R172G (USAF T–41C or D), R172H (USAF T–41D), R172J, R172K, 172RG.	Cessna Aircraft Company	3A17 Revision 45	CAR 3.
Cessna	182, 182K, 182A, 182L, 182B, 182M, 182C, 182N, 182D, 182P, 182E, 182Q, 182F, 182R, 182G, R182, 182H, T182, 182J, TR182.	Cessna Aircraft Company	3A13 Revision 64	CAR 3.
Cessna	210, 210K, 210A, T210K, 210B, 210L, 210C, T210L, 210D, 210M, 210E, T210M, 210F, 210N, T210F, P210N, 210G, T210N, T210G, 210R, 210H, P210R, T210H, T210R, 210J, 210–5 (205), T210J, 210–5A (205A).	Cessna Aircraft Company	3A21 Revision 46	CAR 3.
Cessna	185, A185E, 185A, A185F, 185B, 185C, 185D, 185E.	Cessna Aircraft Company	3A24 Revision 37	CAR 3.
Cessna	320, 320F, 320–1, 335, 320A, 340, 320B, 340A, 320C, 320D, 320E.	Cessna Aircraft Company	3A25 Revision 25	CAR 3.
Cessna	140A	Cessna Aircraft Company	5A2 Revision 21	CAR 3.
Cessna	180, 180E, 180A, 180F, 180B, 180G, 180C, 180H, 180D, 180J, 180E, 180K.	Cessna Aircraft Company	5A6 Revision 66	CAR 3

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
Cessna	336	Cessna Aircraft Company ..	A2CE Revision 7 ...	CAR 3.
Cessna	206, U206B, TP206D, P206, U206C, TP206E, P206A, U206D, TU206A, P206B, U206E, TU206B, P206C, U206F, TU206C, P206D, U206G, TU206D, P206E, TP206A, TU206E, U206, TP206B, TU206F, U206A, TP206C, TU206G.	Cessna Aircraft Company ..	A4CE Revision 43	CAR 3.
Cessna	337A (USAF 02B), T337E, 337B, 337F, M337B (USAF 02A), T337F, T337B, 337G, 337C, T337G, T337C, 337H, 337D, P337H, T337D, T337H, T337H–SP.	Cessna Aircraft Company ..	A6CE Revision 40	CAR 3/14 CFR Part 23.
Cessna	401, 411A, 401A, 414, 401B, 414A, 402, 421, 402A, 421A, 402B, 421B, 402C, 421C, 411, 425.	Cessna Aircraft Company ..	A7CE Revision 46	CAR 3.
Cessna	190 (LC–126A,B,C), 195, 195A, 195B	Cessna Aircraft Company ..	A–790 Revision 36	CAR 3.
Cessna	170, 170A, 170B	Cessna Aircraft Company ..	A–799 Revision 54	CAR 3.
Cessna	150, 150J, 150A, 150K, 150B, A150K, 150C, 150L, 150D, A150L, 150E, 150M, 150F, A150M, 150G, 152, 150H, A152.	Cessna Aircraft Company ..	3A19 Revision 44 ..	CAR 3.
Cessna	177, 177A, 177B	Cessna Aircraft Company ..	A13CE Revision 24	14 CFR Part 23.
Cessna	404, 406	Cessna Aircraft Company ..	A25CE Revision 11	14 CFR Part 23.
Cessna	208, 208A, 208B	Cessna Aircraft Company ..	A37CE Revision 12	14 CFR Part 23.
Cessna	441	Cessna Aircraft Company ..	A28CE Revision 12	14 CFR Part 23.
Cessna	120, 140	Cessna Aircraft Company ..	A–768 Revision 34	CAR 4a.
Commander Aircraft	Model 112, Model 114, Model 112TC, Model 112B, Model 112TCA, Model 114A, Model 114B, Model 114TC.	Commander Aircraft Company.	A12SO Revision 21	14 CFR Part 23.
Great Lakes	2T–1A, 2T–1A–1, 2T–1A–2	Great Lakes Aircraft Company, LLC.	A18EA Revision 10	Aeronautical Bulletin No. 7–A.
Helio (Taylorcraft)	15A, 20	Helio Aircraft Corporation ..	3A3 Revision 7	CAR 4a.
Learjet	23	Learjet Inc	A5CE Revision 10	CAR 3.
Lockheed	402–2	Lockheed Aircraft International.	2A11 Revision 4	CAR 3.
Land-Air (Temco) (Luscombe)	11A, 11E	Luscombe Aircraft Corporation.	A–804 Revision 14	CAR 3.
Maule	Bee Dee M–4, M–5–180C, MXT–7–160, M–4–180V, M–4 M–5–200, MX–7–180A, M–4C, M–5–210C, MXT–7–180A, M–4S, M–5–210TC, MX–7–180B, M–4T, M–5–220C, M–7–235B, M–4–180C, M–5–235C, M–7–235A, M–4–180S, M–6–180, M–7–235C, M–4–180T, M–6–235, MX–7–180C, M–4–210, M–7–235, M–7–260, M–4–210C, MX–7–235, MT–7–260, M–4–210S, MX–7–180, M–7–260C, M–4–210T, MX–7–420, M–7–420AC, M–4–220, MXT–7–180, MX–7–160C, M–4–220C, MT–7–235, MX–7–180AC, M–4–220S, M–8–235, M–7–420A, M–4–220T, MX–7–160, MT–7–420.	Maule Aerospace Technology, Inc.	3A23 Revision 30 ..	CAR 3.
Mooney	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K (Up to S/N 25–2000), M20L.	Mooney Airplane Company, Inc.	2A3 Revision 47	CAR 3.
Interceptor (Aero Commander) (Meyers)	200, 200A, 200B, 200C, 200D, 400	Prop-Jets, Inc	3A18 Revision 16 ..	CAR 3.
Beech	35–33, J35, 35–A33, K35, 35–B33, M35, 35–C33, N35, 35–C33A, P35, E33, S35, E33A, V35, E33C, V35A, F33, V35B, F33A, 36, F33C, A36, G33, A36TC, H35, B36TC, G36.	Raytheon Aircraft Company	3A15 Revision 90 ..	CAR 3.
Beech	45 (YT–34), A45 (T–34A, B–45), D45 (T–34B).	Raytheon Aircraft Company	5A3 Revision 25	CAR 03.
Beech	19A, B23, B19, C23, M19A, A24, 23, A24R, A23, B24R, A23A, C24R, A23–19, A23–24.	Raytheon Aircraft Company	A1CE Revision 34	CAR 3.

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
Beech	3N, E18S–9700, 3NM, G18S, 3TM, H18, JRB–6, C–45G, TC–45G, D18C, C–45H, TC–45H, D18S, TC–45J or E18S, UC–45J (SNB–5).	Raytheon Aircraft Company	A–765 Revision 74	CAR 03.
	RC–45J (SNB–5P)			
Beech	35, A35, E35, B35, F35, C35, G35, D35, 35R.	Raytheon Aircraft Company	A–777 Revision 57	CAR 03.
Raytheon	200, A100–1 (U–21J), 200C, A200 (C–12A), 200CT, A200 (C–12C), 200T, A200C (UC–12B), B200, A200CT (C–12D), B200C, A200CT (FWC–12D), B200CT, A200CT (C–12F), B200T, A200CT (RC–12D), 300, A200CT (RC–12G), 300LW, A200CT (RC–12H), B300, A200CT (RC–12K), B300C, A200CT (RC–12P), 1900, A200CT (RC–12Q), 1900C, B200C (C–12F), 1900D, B200C (UC–12M), B200C (C–12R), B200C (UC–12F), 1900C (C–12J).	Raytheon Aircraft Company	A24CE Revision 91	14 CFR Part 23.
Beech	B95A, D55, D95A, D55A, E95, E55, 95–55, E55A, 95–A55, 56TC, 95–B55, A56TC, 95–B55A, 58, 95–B55B (T–42A), 58A, 95–C55, 95, 95–C55A, B95, G58.	Raytheon Aircraft Company	3A16 Revision 81 ..	CAR 3.
Beech	60, A60, B60	Raytheon Aircraft Company	A12CE Revision 23	14 CFR Part 23.
Beech	58P, 58PA, 58TC, 58TCA	Raytheon Aircraft Company	A23CE Revision 14	14 CFR Part 23.
Cessna	Cessna F172D	Reims Aviation S.A	A4EU Revision 11	CAR 10/CAR 3.
	Cessna F172E			
	Cessna F172F			
	Cessna F172G			
	Cessna F172H			
	Cessna F172K			
	Cessna F172L			
	Cessna F172M			
	Cessna F172N			
	Cessna F172P			
Socata	TB 9, TB 10, TB 20, TB 21, TB 200	Socata—Groupe Aerospatiale.	A51EU Revision 14	14 CFR Part 23.
Pitts	S–1S, S–1T, S–2, S–2A, S–2S, S–2B, S–2C.	Sky International Inc. (Aviat Aircraft, Inc.).	A8SO Revision 21	14 CFR Part 23.
Taylorcraft	19, F19, F21, F21A, F21B, F22, F22A, F22B, F22C.	Taylorcraft Aviation, LLC ...	1A9 Revision 19	CAR 3.
Taylorcraft	BC, BCS12–D, BCS, BC12–D1, BC–65, BCS12–D1, BCS–65, BC12D–85, BC12–65 (Army L–2H), BCS12D–85, BCS12–65, BC12D–4–85, BC12–D, BCS12D–4–85.	Taylorcraft Aviation, LLC ...	A–696 Revision 22	CAR 04
Taylorcraft	(Army L–2G) BF, BFS, BF–60, BFS–60, BF–65, BFS–65, (Army L–2K) BF 12–65, BFS–65.	Taylorcraft, Inc	A–699 Revision 5 ..	CAR 4a
Luscombe	8, 8D, 8A, 8E, 8B, 8F, 8C, T–8F	The Don Luscombe Aviation History Foundation, Inc.	A–694 Revision 23	CAR 4a
Piper	PA–28–140, PA–28–151, PA–28–150, PA–28–161, PA–28–160, PA–28–181, PA–28–180, PA–28R–201, PA–28–235, PA–28R–201T, PA–28S–160, PA–28–236, PA–28S–180, PA–28RT–201, PA–28R–180, PA–28RT–201T, PA–28R–200, PA–28–201T.	The New Piper Aircraft, Inc	2A13 Revision 47 ..	CAR 3.
Piper	PA–30, PA–39, PA–40	The New Piper Aircraft, Inc	A1EA Revision 16	CAR 3.
Piper	PA–32–260, PA–32R–301 (SP), PA–32–300, PA–32R–301 (HP), PA–32S–300, PA–32R–301T, PA–32R–300, PA–32–301, PA–32RT–300, PA–32–301T, PA–32RT–300T, PA–32–301FT, PA–32–301XTC.	The New Piper Aircraft, Inc	A3SO Revision 29	CAR 3.
Piper	PA–34–200, PA–34–200T, PA–34–220T.	The New Piper Aircraft, Inc	A7SO Revision 16	14 CFR Part 23.

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
Piper	PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P–350.	The New Piper Aircraft, Inc	A8EA Revision 22	CAR 3.
Piper	PA–36–285, PA–36–300, PA–36–375 ..	The New Piper Aircraft, Inc	A9SO Revision 9 ...	14 CFR Part 23.
Piper	PA–36–285, PA–36–300, PA–36–375 ..	The New Piper Aircraft, Inc	A10SO Revision 12	14 CFR Part 21/14 CFR Part 23.
Piper	PA–38–112	The New Piper Aircraft, Inc	A18SO Revision 4	14 CFR Part 23.
Piper	PA–44–180, PA–44–180T	The New Piper Aircraft, Inc	A19SO Revision 9	14 CFR Part 23.
Piper	PA–31, PA–31–300, PA–31–325, PA–31–350.	The New Piper Aircraft, Inc	A20SO Revision 10	CAR 3.
Piper	PA–42, PA–42–720, PA–42–1000	The New Piper Aircraft, Inc	A23SO Revision 17	14 CFR Part 23
Piper	PA–46–310P, PA–46–350P, PA–46–500TP.	The New Piper Aircraft, Inc	A25SO Revision 14	14 CFR Part 23.
Tiger Aircraft LLC (American General).	AA–1, AA–1A, AA–1B, AA–1C	Tiger Aircraft LLC	A11EA Revision 10	14 CFR Part 23.
Tiger Aircraft	AA–5, AA–5A, AA–5B, AG–5B	Tiger Aircraft LLC	A16EA Revision 13	14 CFR Part 23.
Twin Commander	500, 500–A, 500–B, 500–U, 520, 560, 560–A, 560–E, 500–S.	Twin Commander Aircraft Corporation.	6A1 Revision 45	CAR 3.
Twin Commander	560–F, 681, 680, 690, 680E, 685, 680F, 690A, 720, 690B, 680FL, 690C, 680FL(P), 690D, 680T, 695, 680V, 695A, 680W, 695B.	Twin Commander Aircraft Corporation.	2A4 Revision 46	CAR 3.
Univair (Stinson)	108, 108–1, 108–2, 108–3, 108–5	Univair Aircraft Corporation	A–767 Revision 27	CAR 3.
Univair	(ERCO) 415–D (ERCO) E (ERCO) G (Forney) F–1 (Forney) F–1A (Alon) A–2 (Alon) A2–A (Mooney) M10	Univair Aircraft Corporation	A–787 Revision 33	CAR 3.
Univair (Mooney)	(ERCO) 415–C, (ERCO) 415–CD	Univair Aircraft Corporation	A–718 Revision 29	CAR 4a.

For all the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 3 or part 23, as amended) do not contain adequate or appropriate safety standards for the AmSafe, Inc., inflatable restraint as installed on these models because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101. Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

Novel or Unusual Design Features

The various airplane models will incorporate the following novel or unusual design feature:

The AmSafe, Inc., Inflatable Two-, Three-, Four-, or Five-Point Restraint Safety Belt with an Integrated Airbag Device. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the restraint, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure. This will, therefore, provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the various airplane models equipped with the AmSafe, Inc., two-, three-, four-, or five-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion of Comments

A notice of proposed special conditions No. 23–06–02–SC for the various airplane models was published on April 20, 2006 (71FR 20368). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the various airplane models previously shown. Should AmSafe, Inc., apply at a later date for a supplemental type certificate to modify any other model included on the Type Certificates shown above, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for some of the airplanes listed is imminent, the FAA finds that good cause exists to make

these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the previously identified airplane models. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the occupant restraint system for the airplane models listed in these Special Conditions. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the airplane models listed in these special conditions, modified by AmSafe, Incorporated. Inflatable Two-, Three-, Four-, or Five-Point Restraint Safety Belt with an Integrated Airbag Device installed in an airplane model.

1a. It must be shown that the inflatable restraint will provide restraint protection under the emergency landing conditions specified in the original certification basis of the airplane. Compliance will be demonstrated using the static test conditions specified in the original certification basis for each airplane.

1b. It must be shown that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual emergency landing event. Therefore, compliance may be demonstrated using the deceleration pulse specified in paragraph 23.562, which may be modified as follows:

I. The peak longitudinal deceleration may be reduced, however the onset rate of the deceleration must be equal to or greater than the emergency landing pulse identified in paragraph 23.562.

II. The peak longitudinal deceleration must be above the deployment threshold of the sensor, and equal or greater than the forward static design longitudinal load factor required by the original certification basis of the airplane.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C22g or C114) restraint.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

15. The installation of the AmSafe Aviation Inflatable Restraint (AAIR) system is prohibited in agricultural airplanes type certificated under the Restricted Category.

Issued in Kansas City, Missouri, on June 6, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9226 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30499; Amdt. No. 3171]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 14, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 2006.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 2, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97,33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
05/19/06	AL	Mobile	Mobile Regional	6/7965	RADAR–1, AMDT 4.
05/22/06	TX	Lubbock	Lubbock Preston Smith Intl	6/8064	LOC BR RWY 35L, AMDT 18A.
05/22/06	TX	Atlanta	Hall Miller Municipal	6/8070	RNAV (GPS) RWY 5, ORIG–A.
05/23/06	TX	Gainesville	Gainesville Municipal	6/8088	NDB RWY 17, AMDT 9.

FDC date	State	City	Airport	FDC No.	Subject
05/23/06	IA	Dubuque	Dubuque Regional	6/8099	ILS RWY 36, ORIG–B.
05/23/06	IA	Dubuque	Dubuque Regional	6/8100	LOC RWY 31, ORIG–B.
05/23/06	IA	Dubuque	Dubuque Regional	6/8101	LOC/DME BC RWY 13, AMDT 5B.
05/23/06	MN	Faribault	Faribault Municipal	6/8103	GPS RWY 30, ORIG.
05/23/06	TX	Mesquite	Mesquite Metro	6/8104	ILS RWY 17, AMDT 1A.
05/23/06	TX	Mesquite	Mesquite Metro	6/8105	LOC BC RWY 35, AMDT 2A.
05/23/06	MD	Westminster	Carroll County Regional/Jack B. Poage Field	6/8121	RNAV (GPS) RWY 34, ORIG.
05/23/06	TX	Rockwall	Rockwall Municipal	6/8133	RNAV (GPS) RWY 35, ORIG.
05/23/06	TX	Victoria	Victoria Regional	6/8134	ILS RWY 12L, AMDT 9A.
05/23/06	TX	Pecos	Pecos Municipal	6/8135	GPS RWY 14, ORIG–A.
05/23/06	TX	Victoria	Victoria Regional	6/8136	NDB RWY 12L, AMDT 4B.
05/23/06	TX	Rockwall	Rockwall Municipal	6/8138	NDB A, ORIG–A.
05/23/06	TX	Port Lavaca	Calhoun County	6/8139	NDB RWY 14, AMDT 4A.
05/23/06	TX	Pecos	Pecos Municipal	6/8140	VOR RWY 14, AMDT 7B.
05/23/06	TX	Rockwall	Rockwall Municipal	6/8141	RNAV (GPS) RWY 17, ORIG.
05/23/06	TX	Canadian	Hemphill County	6/8147	GPS RWY 22, ORIG.
05/23/06	WI	Shawano	Shawano Municipal	6/8153	GPS RWY 29, ORIG.
05/23/06	WI	Madison	Dane County Regional-Traux Field	6/8154	ILS OR LOC/DME RWY 36, ORIG.
05/23/06	WI	Green Bay	Austin Straubel International	6/8160	RADAR–1, AMDT 9B.
05/23/06	WI	Appleton	Outagamie County Regional	6/8161	ILS RWY 3, AMDT 16E.
05/23/06	WI	Rhinelander	Rhinelander-Oneida County	6/8162	ILS RWY 9, AMDT 6B.
05/23/06	WI	Appleton	Outagamie County Regional	6/8163	VOR/DME RWY 3, AMDT 8D.
05/23/06	WI	Oshkosh	Wittman Regional	6/8164	VOR RWY 27, AMDT 4A.
05/24/06	PA	Philadelphia	Philadelphia International	6/8201	Converging ILS RWY 17, AMDT 4.
05/24/06	PA	Philadelphia	Philadelphia International	6/8202	ILS RWY 17, AMDT 6.
05/24/06	MD	Baltimore	Baltimore/Washington International Thurgood Marshall.	6/8203	VOR/DME RWY 4, AMDT 3.
05/24/06	MD	Baltimore	Baltimore/Washington International Thurgood Marshall.	6/8204	RNAV (GPS) RWY 4, ORIG.
05/25/06	AL	Andalusia-OPP	Andalusia-OPP	6/8343	RNAV (GPS) RWY 29, AMDT 1.
05/25/06	OH	Port Clinton	Carl R Keller Field	6/8344	GPS RWY 27, AMDT 1.
05/25/06	MO	Jefferson City	Jefferson City Memorial	6/8358	ILS OR LOC RWY 30, AMDT 5.
05/30/06	MI	Muskegon	Muskegon County	6/8525	RNAV (GPS) RWY 24, ORIG.
05/30/06	IA	Clarinda	Schenck Field	6/8531	GPS RWY 20, ORIG.
05/30/06	IL	Coles County Memorial.	Mattoon/Charleston	6/8532	ILS RWY 29, AMDT 5B.
05/31/06	MO	St Joseph	Rosecrans Memorial	6/8595	ILS OR LOC RWY 35, AMDT 31.

[FR Doc. 06–5320 Filed 6–13–05; 8:45am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30498; Amdt. No. 3170]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 14, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on May 19, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 03 August 2006*

Kotzebue, AK, Ralph Wien Memorial, ILS OR LOC/DME RWY 8, Orig-B
Fullerton, CA, Fullerton Muni, LOC/DME RWY 24, Orig
Fullerton, CA, Fullerton Muni, LOC RWY 24, Amdt 4, CANCELLED
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 6, Orig
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 15, Orig
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 24, Orig
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 33, Orig
Pompano Beach, FL, Pompano Beach Airpark, GPS RWY 15, Orig, CANCELLED
Pompano Beach, FL, Pompano Beach Airpark, GPS RWY 33, Orig, CANCELLED
Pompano Beach, FL, Pompano Beach Airpark, LOC RWY 15, Amdt 3
Brunswick, GA, Brunswick Golden Isles, Takeoff Minimums and Textual DP, Orig
Brunswick, GA, Brunswick Golden Isles, RNAV (GPS) RWY 7, Orig
Brunswick, GA, Brunswick Golden Isles, RNAV (GPS) RWY 25, Orig
Brunswick, GA, Brunswick Golden Isles, GPS RWY 7, Orig, CANCELLED

Brunswick, GA, Brunswick Golden Isles, GPS RWY 25, Orig, CANCELLED
Brunswick, GA, Brunswick Golden Isles, VOR/DME–B, Amdt 8
Rome, GA, Richard B. Russell, Takeoff Minimums and Textual DP, Amdt 3
Ottumwa, IA, Ottumwa Industrial, RNAV (GPS) RWY 13, Orig
Ottumwa, IA, Ottumwa Industrial, VOR/DME RWY 13, Amdt 7
Tallulah, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 36, Amdt 3
Bellaire, MI, Antrim County, RNAV (GPS) RWY 2, Orig
Bellaire, MI, Antrim County, GPS RWY 2, Orig-C, CANCELLED
Bellaire, MI, Antrim County, Takeoff Minimums and Textual DP, Amdt 6
Holland, MI, Park Township, NDB OR GPS RWY 23, Amdt 2B, CANCELLED
Holland, MI, Park Township, Takeoff Minimums and Textual DP, Amdt 2, CANCELLED
Howell, MI, Livingston County Spencer J. Hardy, RNAV (GPS) RWY 13, Amdt 1
Howell, MI, Livingston County Spencer J. Hardy, RNAV (GPS) RWY 31, Orig
Howell, MI, Livingston County Spencer J. Hardy, VOR RWY 31, Amdt 11
Howell, MI, Livingston County Spencer J. Hardy, Takeoff Minimums and Textual DP, Amdt 3
Jackson, MS, Jackson-Evers Intl, LOC BC RWY 16R, Amdt 5, CANCELLED
York, NE, York Municipal, RNAV (GPS) RWY 17, Amdt 1
Wildwood, NJ, Cape May County, LOC RWY 19, Amdt 6
Wildwood, NJ, Cape May County, VOR-A, Amdt 3
Wildwood, NJ, Cape May County, RNAV (GPS) RWY 10, Orig
Wildwood, NJ, Cape May County,GPS RWY 10, Orig-B, CANCELLED
Wildwood, NJ, Cape May County, Takeoff Minimums and Textual DP, Amdt 3
Chapel Hill, NC, Horace Williams, Takeoff Minimums and Textual DP, Amdt 3
Raleigh-Durham, NC, Raleigh-Durham Intl, Takeoff Minimums and Textual DP, Amdt 5
Roxboro, NC, Person County, Takeoff Minimums and Textual DP, Orig
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 6, Amdt 1
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 17, Amdt 1
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 24, Amdt 1
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 35, Amdt 1
Aberdeen, SD, Aberdeen Regional, RNAV (GPS) RWY 35, Orig
Aberdeen, SD, Aberdeen Regional, GPS RWY 35, Orig-B, CANCELLED
Culpeper, VA, Culpeper Regional, LOC RWY 4, Orig
Culpeper, VA, Culpeper Regional, NDB RWY 4, Orig
Christiansted, St. Croix, VI, Henry E Rohlsen, Takeoff Minimums and Textual DP, Amdt 8

* * * *Effective 28 September 2006*

Denver, CO, Jeffco, VOR/DME RNAV RWY 29R, Orig, CANCELLED
Fort Collins (Loveland), CO, Fort Collins-Loveland Muni, VOR/DME RNAV RWY 15, Amdt 4C, CANCELLED
Fort Collins (Loveland), CO, Fort Collins-Loveland Muni, VOR/DME RNAV RWY 33, Amdt 5A, CANCELLED
Carrollton, OH, Carroll County-Tolson, NDB OR GPS RWY 25, Amdt 5A, CANCELLED
Portland, OR, Portland-Hillsboro, NDB–B, Amdt 2, CANCELLED
Portland, OR, Portland Intl, NDB RWY 28L, Amdt 5, CANCELLED
Portland, OR, Portland Intl, NDB RWY 28R, Amdt 11A, CANCELLED
Ogden, UT, Ogden-Hinckley, VOR/DME RNAV RWY 3, Orig-A, CANCELLED
Roosevelt, UT, Roosevelt Muni, VOR/DME RNAV RWY 25, Amdt 2A, CANCELLED
Bellingham, WA, Bellingham Intl, NDB RWY 16, Amdt 1B, CANCELLED
Kelso, WA, Kelso-Longview, NDB OR GPS–A, Amdt 5C, CANCELLED
Shelton, WA, Sanderson Field, NDB OR GPS–A, Amdt 2, CANCELLED

[FR Doc. 06–5321 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 410

Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of the Rule concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (''Rule'' or ''Picture Tube Rule''), as part of the Commission's systematic review of all current Commission regulations and guides, and has determined to retain the Rule in its current form.

DATES: This action is effective as of June 14, 2006.

ADDRESSES: Requests for copies of this rule should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580. The rule also is available on the Internet at the Commission's Web site, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Jennings, (202) 326–3010, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. E-mail: *cjennings@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

II. Background

The Commission's Picture Tube Rule, like the other trade regulation rules issued by the Commission, ''define[s] with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. Such rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of the [Federal Trade Commission] Act, unless the Commission otherwise expressly provides in its rule.'' 16 CFR 1.8.

The Picture Tube Rule, promulgated in 1966, sets forth the appropriate means for disclosing the method by which the dimensions of television screens are measured, when this measurement is included in any advertisement or promotional material for the television set. The purpose of the Rule is to prevent deceptive claims regarding the size of television screens and to encourage uniformity in measuring television screens, thereby aiding comparison shopping. Under the Rule, any representation of the screen size must be based on the horizontal dimension of the actual, viewable picture area, unless the alternative method of measurement is clearly and conspicuously disclosed in close proximity to the size designation. The Rule notes that the horizontal measurement must not take into account any curvature of the tube. Further, disclosing the method of measurement in a footnote rather than in the body of the advertisement does not constitute a disclosure in close proximity to the measurement. The Rule includes examples of both proper and improper representations of size descriptions.

The Rule was last subject to regulatory review in 1994. At that time, the Commission decided to retain the Rule, concluding that it continues to be valuable both to consumers and businesses. The Commission, however, amended the Rule to clarify some of its compliance illustrations, provide metric equivalents for the measurements stated in inches, and add a new Note 3 to explain that the inclusion of metric

figures is for information purposes only and does not impose a requirement on the industry to use metric measurements. 59 FR 54809 (November 2, 1994).

Since the Rule was last subject to regulatory review and amended in 1994, broadcasting and television technology have advanced significantly, and an array of new types of televisions are available in the marketplace. The technological change with the closest nexus to the Rule is the introduction of digital television, including high definition television, and the advent of new wider screen televisions to display these enhanced digital pictures.[1] New television display technologies available today include thin, flat panel televisions with either liquid crystal or plasma display panels. In addition, there have been advances in the quality and popularity of front and rear, big screen, projection televisions.

On April 7, 2005, the Commission published a **Federal Register** notice (''FRN'') seeking comment on the Rule as part of the Commission's ongoing project to review periodically its rules and guides to determine their current effectiveness and impact (70 FR 17623). This FRN sought comment on the continuing need for the Rule, the costs and benefits of the Rule, what changes in the Rule would increase its benefits to purchasers and how those changes would affect compliance costs, and whether technological or marketplace changes have affected the Rule.

III. Regulatory Review Comments

The Commission received six comments in response to the FRN.[2] Comments were received from five individuals[3] and from the Consumer Electronics Association (''CEA''). CEA states that it is the principal U.S. trade association of the consumer electronics and information technologies industries. According to CEA, its more than 2,000 member companies include the world's leading consumer electronics manufacturers.

A. Support for Retaining the Rule

The comments indicated generally that the Picture Tube Rule should remain in effect, although, as explained below, each comment recommended revising the Rule in one or more ways. One commenter, CEA, indicated that the Rule has provided benefits to consumers and imposed small costs on entities subject to the Rule's requirements. In particular, CEA indicated that the Rule requires manufacturers to provide useful information to consumers by allowing a fair comparison of televisions and usefully defines size as the television's viewable area. Although CEA argued that the Rule is unnecessarily burdensome because marketers commonly advertise diagonal measurements rather than horizontal measurements and therefore must add the word ''diagonally'' or a comparable disclosure to product literature and advertising, CEA also stated that the additional printing cost of adding such disclosures is small.[4] None of the commenters advocated repeal of the Rule.

In light of the comments received, and in the absence of any opposition, the Commission concludes that there is a continuing need for the Rule. The comments provide evidence that the Rule serves a useful purpose, while imposing minimal costs on the industry, and the Commission has no evidence to the contrary. In the Commission's view, the Rule ensures the flexibility needed by the industry to use the method of measuring television screens it prefers, while making certain that consumers have enough information regarding screen size to make informed purchasing decisions. While changing the ''default'' measurement from ''horizontal'' to the more commonly used ''diagonal'' as CEA proposed, or requiring marketers to disclose screen size in square inches or metric units as some other commenters proposed, might improve the Rule, the cost of doing so would likely exceed the benefit. Accordingly, the Commission has determined to retain the Picture Tube Rule in its current form.

B. Suggested Changes to the Rule Regarding the Manner of Measurement

Although the comments supported preserving the Picture Tube Rule, all of them proposed changes. CEA urged the Commission to eliminate the horizontal dimension as the Rule's default measurement, which, when used, does not require a disclosure of the method of measurement in close proximity to the size designation.[5] Currently, the advertised dimensions of the television screen's viewable picture area must reflect the horizontal measurement unless the alternative method of measurement is clearly and conspicuously disclosed in close proximity to the size designation. According to CEA, however, the prevailing practice within the industry is to use the diagonal plane to measure the screen. Thus, CEA urged the Commission to amend the Rule to reflect current industry practice. Specifically, CEA proposed requiring marketers to make any claim regarding the size of the television screen using a diagonal measurement, unless they disclose clearly and conspicuously the alternative method of measurement.[6] In support of its recommendation, CEA identified references to television screen sizes, as measured diagonally across the picture viewing area, in Federal Communications Commission regulations announcing the digital television reception capability implementation schedule (47 CFR 15.117), and in flat-panel-screen color television listings in Chapter 85 of the Harmonized Tariff Schedule of the United States.[7]

Three other commenters, however, urged the Commission to amend the Rule to require marketers to describe the size of the television screen's viewable picture area in terms of square inches or square metric units.[8] The commenters stated that such a disclosure would make it easier for consumers to compare the picture areas of conventional television screens with the picture areas of the new wide screen televisions that are available in the marketplace.[9] None of the commenters argued that this change is necessary to prevent

[1] Wider screen televisions have a higher aspect ratio than traditional televisions (the aspect ratio is the ratio between the width of the picture and the height of the picture). Traditional televisions have an aspect ratio of 4 by 3 (1.33 to 1) while wider screen high definition televisions have an aspect ratio of 16 by 9 (1.85 to 1).

[2] The comments are cited in this notice by the name of the commenter. All Rule review comments are on the public record and are available for public inspection in the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The comments also are available on the Internet at the Commission's Web site, *http://www.ftc.gov*.

[3] The Commission's request for public comment elicited comments from the following five individuals: (1) John Woelflein (''Woelflein''), (2) Gavin Young (''Young''), (3) Michael Payne (''Payne''), (4) James Scott Hudnall (''Hudnall''), and (5) William Hooper (''Hooper'').

[4] CEA at 3.

[5] CEA at 1.

[6] CEA also proposed a few minor wording changes to the Rule and the elimination of several examples (*e.g.*, substituting the word ''display'' for the word ''picture'' and dropping examples of improper size descriptions). In addition, it proposed adding a statement that ''This Rule assumes a display with a 4 by 3 aspect ratio. For displays with a 16 by 9 aspect ratio, the diagonal measurement may be followed with a suffix 'W.' '' CEA at Appendix B. CEA did not explain the rationale for these proposed changes. Given that CEA proposed these changes without providing any explanation or supporting evidence, the Commission has determined not to make any of these proposed changes to the Rule.

[7] CEA at 5.

[8] One of them also proposed that the Rule require disclosure of the television's aspect ratio. Hudnall at 1.

[9] Young at 1; Hudnall at 1; and Hooper at 1.

deception or provided the Commission with any market research or other data bearing on how consumers view the various methods of measuring television screens.

When the Commission initially promulgated the Rule in 1966, most television manufacturers measured the dimensions of their television sets diagonally, just as they do today. Thus, the horizontal dimension was not chosen based on a belief that it was the industry norm. Rather, the Commission found that almost all rectangular objects were measured horizontally and vertically. Television screens were the only rectangular-shaped commodities that were measured diagonally. Thus, the Commission reasoned, if a rectangular screen was measured in the usual manner for similarly-shaped objects, then no disclosure was necessary.[10] Moreover, the television industry has adopted the Rule's disclosure requirements as part of its routine business practice, although the industry generally does not use the Rule's default horizontal measurement method. In 1994, the Commission rejected a similar proposal to amend the Rule to adopt the diagonal measurement method as the standard in the Rule (59 FR 54809, 54811 (November 2, 1994)).

The Commission is not aware of any evidence that revising the Rule to require a disclosure when a measurement other than the diagonal dimension is used, or to require marketers to describe screen size in square inches or metric units, would provide a tangible benefit to consumers. Moreover, revising the Rule to make the diagonal measurement the default measurement as CEA proposed could potentially cause confusion to the extent consumers accustomed to seeing screen measurements described as diagonal might mistakenly believe the measurements not described as diagonal are in fact based on horizontal or area measurements. The commenters failed to submit convincing evidence that their proposed changes would confer net benefits on consumers or the industry, or that the Rule as amended would better protect consumers from deception.

The Commission believes that the Rule is sufficiently flexible to allow industry to use the method it prefers for measuring television screen sizes to meet consumer expectations and compete effectively, is easy to comply with at minimal cost, and ensures that advertising contains sufficient information on screen size to allow consumers to make informed purchasing decisions. If marketers determine they can compete more effectively by disclosing screen size measured in square inches or metric units, the Rule allows them to do so. Thus, expending additional resources at this time to seek further comment and testimony at hearings on the methods of measuring television screens is not justified. The absence of evidence indicating a need to amend the Rule and the risk, however small, that amending the Rule as CEA proposed would cause confusion argues against conducting a rulemaking proceeding to re-write the Rule. The Commission has therefore determined not to amend the Rule's disclosure requirements at this time.

C. Suggested Changes to the Rule Regarding Metric Disclosures

Five individual commenters urged the Commission to amend the Rule to require the industry to use metric measurements, in conformance with the Metric Conversion Act.[11] As discussed above, in 1994, the Commission amended the Rule to provide metric equivalents for the measurements stated in inches in the Rule's examples. The Commission noted further that inclusion of metric figures in the Rule was for information purposes only and did not impose a requirement on the industry. In the Commission's view, the Rule is sufficiently flexible to permit industry members to use metric measurements, if they choose to do so to compete effectively in the global marketplace. Accordingly, the Commission has determined not to amend the Rule in this manner.

D. Suggested Changes to the Rule Regarding Rounding

CEA requested that the Commission amend the Rule to address the issue of rounding fractional television screen size dimensions to whole numbers to provide consistency within the industry.[12] In support of its request, CEA referenced an Electronics Industries Alliance (''EIA'') statement that specifies a system for rounding television screen sizes to whole numbers. According to CEA, the statement provides, in part, that, ''A tube having its screen size within plus or minus one-half centimeter shall be assigned that integer. A tube falling exactly on a one-half centimeter shall be assigned the next larger integer.'' [13] CEA recommended that the Commission amend the Rule to adopt an approach to rounding consistent with this statement.

In the absence of consumer research or other evidence on the record in this proceeding that revising the Rule as proposed by CEA would not result in deception in connection with disclosing the viewable picture area of a television screen, the Commission has determined not to amend the Rule at this time to address the issue of rounding.

IV. Conclusion

For the reasons described above, the Commission has determined to retain the current Rule and is terminating this review.

List of Subjects in 16 CFR Part 410

Advertising, Picture tubes, Television sets, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–9233 Filed 6–13–06; 8:45 am]

BILLING CODE 6750–01–P

[10] 31 FR 3342 (March 3, 1966).

[11] Woelflein at 1; Young at 1; Payne at 1; Hudnall at 1; and Hooper at 1. Under Executive Order 12770 of July 25, 1991 (56 FR 35801), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), all Federal agencies are required to use the SI metric system of measurement in all procurements, grants and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

[12] CEA at 4.

[13] *See* Worldwide Type Designation System for TV Picture Tubes and Monitor Tubes, ECA–TEP–106B. EIA is a partnership of electronic and high-tech associations and companies whose mission is promoting the market development and competitiveness of the U.S. high-tech industry. EIA's nearly 1,300 member companies represent the full range of consumer electronic products.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 203

[Docket Nos. 1992N–0297 (Formerly 92N–0297), 1988N–0258 (Formerly 88N–0258), 2006D–0226]

Prescription Drug Marketing Act Pedigree Requirements; Effective Date and Compliance Policy Guide; Request for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; announcement of effective date; notice of availability; request for comment.

SUMMARY: The Food and Drug Administration (FDA) does not intend to further delay the effective date of certain provisions of the final regulation published in the **Federal Register** of

December 3, 1999 (64 FR 67720). The provisions will therefore go into effect on December 1, 2006. In addition, FDA is announcing the availability of a new compliance policy guide (CPG) 160.900 entitled ''Prescription Drug Marketing Act Pedigree Requirements Under 21 CFR Part 203'' for public comment. This CPG describes how the agency intends to prioritize its enforcement efforts during the next year with respect to pedigree requirements set forth in the Federal Food, Drug, and Cosmetic Act (the act) and certain FDA regulations.

DATES: The effective date for §§ 203.3(u) and 203.50 is December 1, 2006. You may submit written or electronic comments on the CPG by July 14, 2006.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. Submit written comments on the CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG document.

FOR FURTHER INFORMATION CONTACT: Ilisa Bernstein, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

A. Implementation of §§ 203.3(u) and 203.50 of 21 CFR Part 203

The Prescription Drug Marketing Act of 1987 (the PDMA), as modified by the Prescription Drug Amendments of 1992, amended sections 301, 303, 503, and 801 of the act (21 U.S.C. 331, 333, 353, 381) to establish, among other things, requirements related to the wholesale distribution of prescription drugs. A primary purpose of the PDMA was to increase safeguards to prevent the introduction and retail sale of substandard, ineffective, and counterfeit drugs in the U.S. drug supply chain.

Section 503(e)(1)(A) of the act establishes the so-called ''pedigree'' requirement for prescription drugs. A drug pedigree is a statement of origin that identifies each prior sale, purchase, or trade of a drug, including the dates of those transactions and the names and addresses of all parties to them. Under the pedigree requirement, each person who is engaged in the wholesale distribution of a prescription drug in interstate commerce, who is not the manufacturer or an authorized distributor of record for that drug, must provide to the person who receives the drug a pedigree for that drug. The PDMA states that an authorized distributor of record is a wholesaler that has an ''ongoing relationship'' with a manufacturer to distribute that manufacturer's drug. However, the PDMA does not define ''ongoing relationship.''

In 1999, FDA published final regulations implementing the PDMA (part 203 (21 CFR part 203)). The regulations were to take effect in December 2000. After publication of the 1999 final rule, the agency received comments objecting to the provisions in §§ 203.3(u) and 203.50. Section 203.3(u) defines ''ongoing relationship'' to include a written agreement between manufacturer and wholesaler. Section 203.50 specifies the fields of information that must be included in the drug pedigree and states that the information must be traceable back to the first sale by the manufacturer. Based on concerns raised by various stakeholders, the agency delayed the effective date of §§ 203.3(u) and 203.50 several times.

Most recently, in February 2004, FDA delayed the effective date of §§ 203.3(u) and 203.50 until December 1, 2006, in part because we were informed by stakeholders in the U.S. drug supply chain that the industry would voluntarily implement electronic track and trace technology by 2007. If widely adopted, this technology could create a de facto electronic pedigree documenting the sale of a drug product from its place of manufacture through the U.S. drug supply chain to the final dispenser. If properly implemented, an electronic record could thus meet the pedigree requirements in section 503(e)(1)(A) of the act. Based on a recent fact-finding effort by FDA to assess the use of e-pedigree across the supply chain, however, it appears that industry will not fully implement track and trace technology by 2007.

Today, the agency is announcing that it does not intend to delay the effective date of §§ 203.3(u) and 203.50 beyond December 1, 2006. As such, these provisions defining ''ongoing relationship'' and setting forth requirements regarding the information that must appear in pedigrees will go into effect as of December 1, 2006.

B. CPG

We are issuing a draft CPG that describes how we plan to prioritize our enforcement actions during the next year with respect to these new requirements. To this end, FDA is announcing the availability of a new CPG Section 160.900, entitled ''Prescription Drug Marketing Act Pedigree Requirements Under 21 CFR Part 203.'' This CPG, which the agency is publishing in draft for comment, lists factors that FDA field personnel are expected to consider in prioritizing FDA's pedigree-related enforcement efforts during the next year. Consistent with our risk-based approach to the regulation of pharmaceuticals, these factors focus our resources on drug products that are most vulnerable to counterfeiting and diversion or that are otherwise involved in illegal activity.

FDA has not provided in the CPG a list of drug products that have been counterfeited in the past. We solicit comment on the merit of providing such a list.

The priorities described in the CPG reflect a phased-in type approach to the enforcement of the stayed pedigree provisions. The CPG will expire 1 year after the final CPG is issued. By providing guidance on the types of drugs that are currently of greatest concern to FDA, we believe that wholesale distributors will have a better idea of where and how to focus their initial energies as they implement systems to come into complete compliance with part 203 for all the prescription drugs they distribute.

FDA is issuing this CPG as a level 1 guidance consistent with FDA's good guidance practices regulations (21 CFR 10.115).

We note that guidance documents are not binding on FDA or industry, and, under appropriate circumstances, the agency may initiate regulatory action, including a criminal prosecution, for pedigree violations that do not meet the factors set forth in the CPG.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the CPG document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.fda.gov/ora* under ''Compliance Reference''.

Dated: June 7, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–5362 Filed 6–9–06; 9:35 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX–054–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed to revise its fish and wildlife habitat revegetation guidelines by adding technical guidelines and management practices concerning habitat suitable for bobwhite quail and other grassland bird species. Texas intends to revise its program to encourage reclamation practices that are suitable for bobwhite quail and other grassland bird species.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated July 26, 2005 (Administrative Record No. TX–659), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the August 31, 2005, **Federal Register** (70 FR 51689). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one.

During our review of the amendment, we identified concerns relating to Texas' revegetation guidelines document at Section V.D.1., Fish and Wildlife Habitat; Section V.D.2., Woody-Plant Stocking; Appendix B, Summary of Revegetation Success Standards (Fish and Wildlife Habitat Only); and Attachment 2, Minimum Woody Vegetation Stocking Rates. We notified Texas of the concerns by letters dated October 17, 2005, and February 8, 2006 (Administrative Record Nos. TX–659.07 and TX–659.13). On January 12 and March 10, 2006, Texas sent us revisions to its amendment (Administrative Record Nos. TX–659.11 and TX–659.12).

Based on Texas' revisions to its amendment, we reopened the public comment period in the April 21, 2006, **Federal Register** (71 FR 20602). The public comment period ended on May 8, 2006. We received comments from one industrial group, one mining association, one State agency, and one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Section V. Revegetation Success Standards

At the request of the Texas Parks and Wildlife Department (TPWD), Texas proposed to revise the following provisions in Section V of its August 1999 revegetation success guidelines document.

1. Table of Contents

Texas revised the Table of Contents for Section V.D. Fish and Wildlife by adding two sub-categories entitled ''General Category'' and ''Bobwhite Quail and Other Grassland Bird Species.''

Because these changes are minor, we find that they will not make Texas' revegetation success guidelines document less effective than the corresponding Federal regulation at 30 CFR 816.116(a)(1). This Federal regulation requires that standards for success and statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program.

2. Section V.D.1. Fish and Wildlife Habitat—Ground Cover

At Section V.D.1., Texas added a ground cover technical standard for bobwhite quail and other grassland bird species and added other associated changes. Texas also made some minor clarifying changes to existing provisions.

a. Texas changed the heading of the third paragraph from ''Use of Technical Standard'' to ''Use of General Technical Standard.''

Because this change is minor, we find that it will not make Texas' revegetation success guidelines document less effective than the corresponding Federal regulation at 30 CFR 816.116(a)(1).

b. Use of Bobwhite Quail and Other Grassland Bird Species Technical Standard.

(1) Texas proposed to add two new paragraphs concerning the technical standard for bobwhite quail and other grassland bird species. They read as follows:

Use of Bobwhite Quail and Other Grassland Bird Species Technical Standard. The technical standard is 63% to 70% ground cover.

Erosion of landscapes is a natural process dependent on relief, type of geologic material, precipitation, and vegetative cover. Appropriate reclamation land use planning takes these factors into account and will ensure that in all cases ground cover will be adequate to control erosion.

(2) Texas revised the second, third, and fourth sentence of the paragraph entitled ''Statistical Comparison'' to read as follows:

The success standard for Bobwhite Quail habitat ground cover reflects a range since the technical standard is expressed as a range with a lower and upper value. For this habitat the success standard range is reflected by the lowest value of 57% [63% × 0.9] and the highest value of 77% [70% × 1.1]

If the reclaimed area ground cover is equal to or greater than the lowest acceptable value, or in the case of Bobwhite Quail habitat also equal to or less than the highest acceptable value, there is no need to calculate a confidence interval (in this case, the reclaimed area will have met the revegetation success standard).

If the reclaimed area ground cover does not meet the acceptable value(s), perform a hypothesis test, using a one-sided 90% confidence interval (see Appendix A, bionomically-distributed data).

During our technical review, we found that the optimal habitat for bobwhite quail and many native grassland bird species is comprised of native warm season grasses with an approximate 63 to 70 percent ground cover density. This cover standard is recognized by past research and agencies with wildlife management responsibilities within the State of Texas. The technical standard for this habitat cover reflects a value range since the standard is expressed as a range with a lower and upper value. The 63 to 70 percent cover standard increases habitat suitability for game birds and allows flexibility to ensure erosion control and soil stabilization. Based on our technical review, we find that Texas' proposed technical standard meets the requirements of 30 CFR 816.116(a) and 816.116(b)(3)(iii). These regulations provide that success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use. We, also, find that Texas' statistical comparison proposal is no less effective than 30 CFR 816.116(a)(2), which states, in part, that groundcover will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. We further find that Texas' provision concerning erosion of landscapes will ensure that in all cases ground cover will be adequate to control erosion. Therefore, we are approving all the changes that Texas proposed for Section V.D.1.

3. Section V.D.2. Fish and Wildlife Habitat—Woody-Plant Stocking

Texas added the following new paragraph under the heading ''Use of Technical Standards.''

Motte locations planted to support Bobwhite Quail and other grassland bird species habitat shall be mapped at the time of planting. The success of woody plant stocking (stem count) will be based on meeting or exceeding the technical standard for motte density per acre and by counting the number of stems per motte.

We find that the above paragraph is no less effective than the Federal regulation at 30 CFR 816.116(b)(3)(i), which requires that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Attachment 2, which is discussed below, contains the minimum woody vegetation stocking rates and planting standards for mottes. Texas requires consultation and approval on a permit-specific basis. Therefore, we are approving Section V.D.2.

B. Appendix B Summary of Revegetation Success Standards—Fish and Wildlife Habitat Only

Texas revised revegetation parameters and performance standards for the ground cover and woody-plant stocking rate sections of the table in Appendix B.

1. The first paragraph of the ground cover portion of the table is revised by adding the word ''General.'' The revised paragraph reads as follows:

90% of the Following General Technical Standard: 78%

2. Texas proposed to add a second paragraph to the ground cover portion of the table that reads as follows:

90% (lower limit) and 110% (upper limit) of the following Bobwhite Quail and [Other] Grassland Bird Species Technical Standard: 63%–70%

3. Texas revised the first paragraph of the Woody-Plant Stocking Rate portion of the table as follows:

90% of the Following Technical Standard except for mottes used to support Bobwhite Quail and [Other] Grassland Bird Species the standard for which is based on meeting or exceeding the following Technical Standard: Site-specific success standards will be developed by the permittee through consultation with the Texas Parks and Wildlife Department. Standards will be approved by the Texas Parks and Wildlife Dept.

We find that the above revisions and addition are no less effective than the Federal regulation at 30 CFR 816.116(b)(3). Therefore, we are approving the changes made to Appendix B.

C. Attachment 2—Texas Parks and Wildlife Department (TPWD) Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates

Texas made changes to the ''Minimum Woody Vegetation Stocking Rates'' table that is included in Attachment 2. The current table pertains to all fish and wildlife land use habitat categories. The revised table will include a general fish and wildlife land use habitat category and a specific fish and wildlife land use habitat category for bobwhite quail and other grassland bird species.

1. General Wildlife Land Type Category and Stocking Rates/Planting Standards

a. Texas added the headings ''General Wildlife Land Type Category'' and ''Stocking Rates/Planting Standards'' to the existing table.

b. Under the ''General Wildlife Land Type Category'' heading, Texas added the language ''(See Note 1)'' after the subheading of ''Hardwood.'' Texas added ''Note 1'' to the bottom of the revised table. It reads as follows: ''Note 1: Up to 30% of the planting standard can be pine. Longleaf pine is preferred, with native warm season grasses interspersed.'' Texas also removed the subheading of ''Pine'' along with the ''Statewide'' designation. Under the Stocking Rates/Planting Standards heading, Texas removed the language ''0 stems per acre'' for pine.

2. Fish & Wildlife Habitat—Bobwhite Quail and Other Grassland Bird Species and Stocking Rates/Planting Standards

Texas added to the existing ''Minimum Woody Vegetation Stocking Rates'' table, as shown below, a new land use habitat category for bobwhite quail and other grassland bird species and the associated stocking rates and planting standards.

Fish & Wildlife Habitat—Bobwhite Quail and other grassland bird species	Stocking rates/planting standards
Native Brush:	

Fish & Wildlife Habitat—Bobwhite Quail and other grassland bird species	Stocking rates/planting standards
Statewide—Mottes	a. density of 2 mottes per acre. b. mottes 30–50 feet in diameter. c. 125 stems per motte or 250 stems per acre.
Hardwood or Pine Statewide	0 to a maximum 20 stems per acre.

During our technical review, we found that Texas' changes to the ''Minimum Woody Vegetation Stocking Rates'' table meet the requirements in the Texas Agricultural Extension Service, Publication L–5196. We further find that the ''Minimum Woody Vegetation Stocking Rates'' table is no less effective than the Federal regulation at 30 CFR 816.116(b)(3)(i). This Federal regulation requires that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of wildlife programs. In this case, the State agency is the Texas Parks and Wildlife Department. Therefore, we are approving the revisions made by Texas to the ''Minimum Woody Vegetation Stocking Rates'' table.

D. Normal Husbandry Practices for Surface-Mined Lands in Texas

1. Texas revised the Table of Contents by adding ''Bobwhite Quail and Other Grassland Bird Species Habitat Management Practices'' to Section IV.E. Fish and Wildlife Habitat.

2. Texas revised Section IV.E. Fish and Wildlife Habitat by adding the following technical guidelines for ''Bobwhite Quail and Other Grassland Bird Species Habitat Management Practices'': Native Grass and Forb Restoration; Grazing, Patch Burning; Strip Discing; Brush Management; Prescribed Burning; and Bobwhite Ecology and Management.

Texas submitted revisions to its revegetation success guidelines document that describes the normal husbandry practices for managing bobwhite quail and other grassland bird species habitat that may be used by the permittee during the period of responsibility for revegetation success and bond liability without restarting the extended responsibility period. The Texas Coal Mining Regulation at 16 TAC 12.395(c)(4) allows Texas to approve selective husbandry practices provided it obtains prior approval from OSM that the practices are normal husbandry practices. The Federal regulation at 30 CFR 816.116(c)(4) allows each regulatory authority to approve selective husbandry practices as normal husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval for the practices from OSM in accordance with 30 CFR 732.17. These normal husbandry practices may be implemented without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including any pruning, reseeding, and transplanting needed because of these practices.

As discussed in the findings above, we find that the normal husbandry practices contained in Texas' revegetation success guidelines document satisfy the requirements of 30 CFR 816.116(c)(4).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, and we received comments from one industrial group, one mining association, and one State agency. All the commenters agreed with the amendment.

On September 26, 2005, TXU Power (TXU) and on September 29, 2005, Texas Mining and Reclamation Association (TMRA) commented on the proposed amendment (Administrative Record Nos. TX–659.04 and TX–659.05). TXU and TMRA commented that the reestablishment of vegetation and post-mine land use on mined land in Texas offers a unique opportunity for the creation of habitat for the benefit of upland and grassland bird species. They both commented that the proposed changes are based on the biology, ecology, and habitat requirements of bobwhite quail and other grassland bird species. They believed these changes will increase flexibility in revegetation options and make grassland bird habitat a viable post-mine land use alternative.

On October 4, 2005, TPWD commented on the proposed amendment (Administrative Record No. TX–659.06). TPWD commented that it coordinated this effort for over two years with TMRA, Texas Department of Agriculture, Texas Quail Technical Support Committee, Texas Quail Council, and U.S. Fish and Wildlife Service (FWS). TPWD stated that each of these groups is concerned that bobwhite quail and other grassland bird species are experiencing a downward trend in population, primarily due to declining native grassland habitats. They all see this as an opportunity to work on establishment of early successional and grassland habitats on reclaimed mine lands in Texas to assist in the recovery of these species. The TPWD further commented that the flexibility that is proposed in these revisions will allow mine companies to reclaim areas in native vegetation that is more suitable to these birds as well as other grassland species. This will provide opportunity for thousands of acres to be reclaimed in Texas for the benefit of these species.

We agree with all of the commenters; see our findings above approving the amendment.

Federal Agency Comments

On August 10, 2005, and March 24, 2006, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record Nos. TX–659.01 and TX–659.14). FWS responded on September 6, 2005 (Administrative Record No. TX–659.02), that it provided input to TPWD during the development of the proposed revegetation guidelines. FWS also stated that it believed these new guidelines will make it easier for mining companies in Texas to use native grasses and forbs in their revegetation projects and recommend they be approved as proposed.

We agree with FWS; see our findings above approving the amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence

from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On August 10, 2005, and March 24, 2006, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. TX–659.01 and TX–659.14). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 10, 2005, and March 24, 2006, we requested comments on Texas' amendment (Administrative Record Nos. TX–659.01 and TX–659.14), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on July 26, 2005, and as revised on January 12, 2006, and March 10, 2006.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 18, 2006.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
July 26, 2005	June 14, 2006 ..	Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas—Table of Contents; Section V.D.1., D.2.; Appendix B; Attachment 2; Normal Husbandry Practices for Surface-Mined Lands in Texas—Table of Contents; Section IV.E.

[FR Doc. E6–9286 Filed 6–13–06; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–055]

RIN 1625–AA00

Safety Zone: Fort Story, Chesapeake Bay, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in support of the Joint Logistics Over the Shore Naval Operations to be held on the Chesapeake Bay in the vicinity of Fort Story, Virginia Beach, VA. This action is intended to restrict vessel traffic from certain areas of the Chesapeake Bay in the vicinity of Fort Story. The safety zone is necessary to protect mariners from the hazards associated with the naval operations.

DATES: This rule is effective from 12:01 a.m. eastern time on June 5, 2006 to 11:59 p.m. eastern time on June 26, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–055 and are available for inspection or copying at USCG Sector Hampton Roads, 200 Granby Street, Suite 700, Norfolk, VA 23510, between 9:30 a.m. and 2 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Bill Clark, project officer, USCG Sector Hampton Roads, telephone number (757) 668–5580.

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), the Coast Guard finds that good cause exists for not publishing an NPRM because it is impracticable and contrary to the public interest to delay in making this rule effective, because we did not receive notice of planned exercises from the Navy in time to publish an NPRM. The event will take place between 12:01 a.m. eastern time on June 5, 2006 and 11:59 p.m. eastern time on June 26, 2006. Due to the dangers posed by the naval operations, it is in the public interest to have these regulations in effect during the operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Because we did not receive notice of planned exercises from the Navy in time to publish an NPRM and the hazards associated with the naval operations, a limited access area is necessary to provide for the safety of mariners.

Background and Purpose

Between 12:01 a.m. eastern time on June 5, 2006 and 11:59 p.m. eastern time on June 26, 2006 the Joint Logistics Over the Shore Naval Operations will be held on the Chesapeake Bay in the vicinity of Fort Story, Virginia Beach, VA. Due to the need for protection of mariners from the hazards associated with the naval operations, vessel traffic will be temporarily restricted.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Chesapeake Bay in the vicinity of Fort Story. The U.S. Navy will be providing assistance to the Coast Guard in regards to the patrol and enforcement of this zone. The regulated area will include all waters contained within the following coordinates: 36–55–33N/076–02–47W; 36–56–38N/076–04–00W; 36–57–12N/076–04–00W; 36–56–33N/076–01–34W and 36–55–12N/076–01–33W. This safety zone will be enforced from 12:01 a.m. to 11:59 p.m. eastern time on June 5 to June 26, 2006. General navigation

in the safety zone will be restricted during the naval operations. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

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).

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C, section 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 and operators of vessels intending to transit or anchor in that portion of the Chesapeake Bay between 12:01 a.m. eastern time on June 5, 2006 and 11:59 p.m. eastern time on June 26, 2006. The safety zone will not have a significant impact on a substantial number of small entities; maritime advisories will be issued, so the mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting & Record Keeping Requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart C 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add Temporary § 165.T05–055, to read as follows:

§ 165.T05–055 Safety Zone: Fort Story, Chesapeake Bay, Virginia Beach, VA.

(a) *Location.* The following area is a safety zone: all waters in the vicinity of Fort Story contained within coordinates 36–55–33N/076–02–47W; 36–56–38N/076–04–00W; 36–57–12N/076–04–00W;36–56–33N/076–01–34W and 36–55–12N/076–01–33W. in the Captain of the Port, Hampton Roads zone as defined in 33 CFR 3.25–10.

(b) *Definition.* The following definition applies to this section:

Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or the Captain of the Port Representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(1) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads, Norfolk, VA can be contacted at telephone Number (757) 668–5555 or (757) 484–8192.

(2) The Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) *Effective date:* This regulation is effective from 12:01 a.m. eastern time on June 5, 2006 until 11:59 p.m. eastern time on June 26, 2006.

Dated: May 23, 2006.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E6–9230 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0012; FRL–8183–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Ambient Air Quality Standard for Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision consists of modifications to the ambient air quality standards for ozone and fine particulate matter and the replacement of the abbreviation ''ppm'' with parts per million in existing standards. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on July 14, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–MD–0012. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 13, 2005 (70 FR 59688), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of modifications to the ambient air quality standards for ozone and fine particulate matter (PM2.5) and the replacement of the abbreviation ''ppm'' with parts per million in existing standards. The official SIP revision (#05–01) was submitted by the State of Maryland on March 15, 2005.

II. Summary of SIP Revision

Maryland's revision incorporates the 1997 Federal 8-hour ozone and PM2.5 standards into Title 26, Subtitle 11, Chapter 4 of the Code of Maryland Administrative Regulations (COMAR 26.11.04). The new ozone standard incorporated in this SIP revision is the average of the fourth-highest daily maximum 8-hour average ozone concentration that is less than or equal to 0.08 ppm, averaged over three consecutive years. The standards for PM2.5 incorporated in this SIP revision are 65 micrograms per cubic meter based on a 24-hour concentration and 15.0 micrograms per cubic meter annual arithmetic mean concentration. The revision also includes a clarification of the unit of measure for ambient air quality standards for sulfur oxides and nitrogen dioxide. The abbreviation ''ppm'' has been replaced by the written form ''parts per million''. No public comments were received on the NPR.

III. Final Action

EPA is approving the amendments to COMAR 26.11.04, consisting of the addition of new 8-hour ozone ambient air quality standards and fine particulate matter ambient air quality standards, as well as clarification of the

unit of measure, as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve modifications to the ambient air quality standards for ozone and fine particulate matter may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entries for 26.11.04.03, 26.11.04.04, 26.11.04.05, 26.11.04.07, and 26.11.04.08 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.04 State Adopted Ambient Air Quality Standards and Guidelines				

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	* * * * *	*	*	*
26.11.04.03	Definitions, Reference Conditions, and Methods of Measurement.	2/28/05	6/14/06 [Insert page number where the document begins]	
26.11.04.04	Particulate Matter	2/28/05	6/14/2006 [Insert page number where the document begins]	Addition of ambient air quality standard for PM2.5.
26.11.04.05	Sulfur Oxides	2/28/05	6/14/06 [Insert page number where the document begins]	
*	* * * * *	*	*	*
26.11.04.07	Ozone	2/28/05	6/14/06 [Insert page number quality where the document begins]	Addition of 8-hour ambient air quality standard for ozone
26.11.04.08	Nitrogen Dioxide	2/28/05	6/14/06 [Insert page number where the document begins]	

* * * * *

[FR Doc. 06–5298 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0367; FRL–8182–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Twelve Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for twelve major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on July 31, 2006 without further notice, unless EPA receives adverse written comment by July 14, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0367 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0367, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. 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–R03–OAR–2006–0367. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available,

i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the Ageneric RACT regulations''. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions. EPA reviews these SIP revisions to ensure that the PADEP has determined and imposed RACT in accordance with the provisions of the SIP-approved generic RACT rules.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On August 1, 1995, September 20, 1995, December 8, 1995, January 10, 1996, October 18, 1996, January 21, 1997, December 7, 1998, and November 21, 2005, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for twelve sources of VOC and/or NO_X. The Commonwealth's submittals consist of PAs and OPs which impose VOC and/or NO_X RACT requirements for each source.

II. Summary of the SIP Revisions

Copies of Pennsylvania's entire SIP submittal, including the actual PAs and OPs imposing RACT, PADEP's evaluation memoranda and the sources' RACT proposal are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the *http://www.regulations.gov* index. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

The table below identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA.—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) operating permit (OP #)	Source type	A ''Major Source'' Pollutant
American Refining Group, Inc	McKean	OP–42–004	Refinery	VOC & NO_X
Bellefonte Lime Company	Centre	OP–14–0002	Coal-fired rotary kilns	NO_X
Butter Krust Baking Company, Inc	Northumberland	OP–49–0006	Baking process	VOC
Carnegie Natural Gas Company	Greene	30–000–106	Natural Gas Compressor	VOC & NO_X
Caterpillar, Inc	York	67–2017	Surface coating process	VOC
Gencorp, Inc	Schuykill	54–0009	Film manufacturing	VOC
Harris Semiconductor	Luzerne	OP–40–0001A	Solvent clean-up	VOC
Merisol Antioxidants LLC	Venango	OP–61–00011	Specialty organic chemical production.	VOC
Norcon Power Partners, L. P.	Erie	OP–25–923	Cogeneration plant	NO_X
Triangle Pacific Corporation	Juniata	34–2001	Surface coating operations	VOC
Viking Energy	Northumberland	OP–49–0004	Woodwaste-fired cogeneration	NO_X
White Cap, Inc	Luzerne	40–0004	Solvent clean-up	VOC

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for twelve major sources. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 31, 2006 without further notice unless EPA receives adverse comment by July 14, 2006. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for twelve named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2006. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for twelve sources in the Commonwealth of Pennsylvania does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries

for American Refining Group, Inc., Bellefonte Lime Company, Butter Krust Baking Company, Inc., Carnegie Natural Gas Company, Caterpillar, Inc., Gencorp, Inc., Harris Semiconductor, Merisol Antioxidants LLC, Norcon Power Partners, L.P., Triangle Pacific Corp., Viking Energy of Northumberland Limited Partnership, and White Cap, Inc., at the end of the table to read as follows:

52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	* *	*	*	*	
American Refining Group, Inc.	OP–42–004	McKean	11/23/98	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Bellefonte Lime Company	OP–14–0002	Centre	10/19/98	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Butter Krust Baking Company, Inc.	OP–49–0006	Northumberland	11/5/96	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Carnegie Natural Gas Company.	30–000–106	Greene	9/22/95	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Caterpillar, Inc	67–2017	York	8/1/95	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Gencorp, Inc	54–0009	Schuykill	5/31/96	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Harris Semiconductor	OP–40–0001A	Luzerne	4/16/99	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Merisol Antioxidants LLC	OP–61–00011	Venango	4/18/05	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Norcon Power Partners, L.P.	OP–25–923	Erie	9/21/95	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Triangle Pacific Corp	34–2001	Juniata	5/31/95	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
Viking Energy of Northumberland Limited Partnership.	OP–49–0004	Northumberland	5/30/95	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)
White Cap, Inc	40–0004	Luzerne	7/20/95	6/14/06 [Insert page number where the document begins].	52.2020(d)(1)(q)

* * * * *

[FR Doc. 06–5293 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 155

[EPA–HQ–OPP–2004–0404; FRL–8071–5]

RIN 2070-AD29

Pesticides; Procedural Regulations for Registration Review; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft final rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft final rule will establish procedures to implement section 3(g) of FIFRA which provides for periodic review of pesticide registrations. The goal of these regulations, which are required by FIFRA section 3(g), is to review a pesticide's registration every 15 years. The regulations will address the following procedural aspects of the program: establishing pesticide cases for registration review; establishing schedules; assembling information to be considered during the review; deciding on the scope and depth of the review; calling in data under FIFRA section 3(c)(2)(B) that are needed to conduct the review; reviewing data and conducting risk assessments or benefit analyses, as needed; deciding whether a pesticide continues to meet the standard of registration in FIFRA; and public participation in the registration review process. If a pesticide does not meet the FIFRA standard, and cancellation is determined to be needed, the Agency will follow cancellation procedures in section 6 of FIFRA. This program will begin after the completion of tolerance reassessment in 2006 and before the completion of reregistration in 2008. Each pesticide will be reviewed every

15 years to assure that the it continues to meet the FIFRA standard for registration, including compliance with any new legislation, regulations or science policy.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0404. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: (703) 308-9341; e-mail address: *prunier.vivian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft final rule to the United States Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to those persons who register pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or who use pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15–day period.

III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

IV. Will this Notification be Subject to the Congressional Review Act?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

List of Subjects in Part 155

Environmental protection, Administrative practice and procedure, Pesticides and pests

Dated: June 2, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–9077 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0303; FRL–8072–3]

Bacillus mycoides isolate J; 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 microbial pesticide *Bacillus mycoides* isolate J on sugar beets when applied/used to control Cercospora Leaf Spot (*Cercospora beticola*) in sugar beets. Montana Microbial Products 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 the temporary exemption from tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus mycoides* isolate J. The temporary tolerance exemption will expire on December 31, 2007.

DATES: This regulation is effective June 14, 2006. Objections and requests for hearings must be received on or before August 14, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0303. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Anne Ball, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 204607–0001; telephone number: (703) 308–8717; e-mail *address:ball.anne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0303 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 August 14, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0303, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 18, 2006 (71 FR 2932–2933) (FRL–7755–9), 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 5G6983) by Montana Microbial Products, 510 East Kent Avenue, Missoula MT 59801. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Bacillus mycoides* isolate J. This notice included a summary of the petition prepared by the petitioner Montana Microbial Products. One comment was received in response to the notice of filing. The commenter objected to an exemption from the requirement of a tolerance. This commenter apparently misunderstood the nature of the product which does not contain a gene-altered substance. EPA concludes that *Bacillus mycoides* isolate J is ubiquitous in nature and for purposes of this temporary tolerance exemption, EPA has determined that it will be safe when used in agriculture.

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.

An Acute Pulmonary Toxicity/Pathogenicity study (OPPTS 885.3150) in rats which were dosed intratracheally with *Bacillus mycoides* isolate J at 1.1 x 10^8 cfu/animal, was reviewed and found to be supplemental because a clear pattern of clearance from all organs was not demonstrated during the study's 35–day length. The test substance, however, did show a pattern of clearance in some organs. Differential heat treatment of tissue samples had suggested that most of the recovered organisms were spores. No treated animals died nor were there signs in the animals of toxicity or pathogenicity. Given the ubiquitous nature of this spore forming bacterium which is found on plants, in soil, water, air and decomposing plant tissue, along with the lack of mortality of the test animals and the absence of overt signs of toxicity or pathogenicity in the animals during the course of this pulmonary study, issuance of the Experimental Use Permit (EUP) can be justified provided there are instructions for appropriate respiratory protection for the applicators specified on the product label.

The Agency has granted the requests for waivers for the studies Primary Eye Irritation (OPPTS 870.2400) and Primary Dermal Irritation (OPPTS 870.2500). The registrant had provided the following rationales for the requests with which the EPA agrees:

1. The inert ingredient in the *Bacillus mycoides* isolate J end product is on the EPA inert list 4A as safe for food use. The combination of *Bacillus mycoides* isolate J spores with this inert would not be expected to exacerbate primary ocular and dermal irritation or infection.

2. Personnel who worked with *Bacillus mycoides* isolate J for 2 to 7 years showed no eye or dermal exposure effects.

3. Eye or dermal exposure to *Bacillus mycoides* isolate J will be limited by supervision and protective equipment. If eye or dermal exposure did, however, occur, the spores will rinse out of the eye with water or wash off the skin with soap and water because spores are hydrophilic.

4. *Bacillus mycoides* isolate J is not recorded as a human pathogen. Due to the ubiquitous presence of *Bacillus mycoides* isolate J in agricultural soils, there has been long term human exposure to *Bacillus mycoides* isolate J in crops and to residual *Bacillus mycoides* isolate J cells or spores in food crops. No toxicity or pathogenicity of *Bacillus mycoides* isolate J in humans had been reported in numerous searched citations.

In connection with the requirement for reporting Hypersensitivity Incidents (OPPTS 885.3400), the Registrant has notified the Agency that no recorded or reported adverse hypersensitivity reaction to *Bacillus mycoides* isolate J has occurred during the period of 2 years in which the substance has been handled in a laboratory setting.

As stated above, a pattern of complete clearance from all organs had not been demonstrated for the acute pulmonary toxicity/pathogenicity study (OPPTS 885.3150).The requests for waivers on the following studies are contingent on demonstrating a pattern of clearance of the test organism in the acute pulmonary toxicity/pathogenicity study, and thus the requests for waivers were not granted.

- Acute Oral Toxicity/Pathogenicity (OPPTS 885.3050)
- Acute Dermal Toxicity/Pathogenicity (OPPTS 885.3100)
- Acute Injection Toxicity/Pathogenicity (OPPTS 885.3200)
- Immune Response (OPPTS 885.3550)

However, as previously stated in this document, the test substance for the acute pulmonary toxicity/pathogenicity did show a pattern of clearance in some organs. There was no mortality of the test animals, nor were there signs in the animals of toxicity or pathogenicity caused by this ubiquitous spore-forming bacterium. The issuance of the Experimental Use Permit (EUP) can be justified provided there are instructions for appropriate respiratory protection for the applicators specified on the product label. The basis for this conclusion rests not only on the ubiquitous nature of *Bacillus mycoides* isolate J, the absence of mortality, and of overt adverse reactions in the test animals, but also on the absence of reported or cited incidents of pathogenicity or toxicity in the course of an extensive literature search. Therefore, issuance of the Experimental Use Permit (EUP) can be justified without the requirement for studies based on OPPTS 885.3050, 885.3100, 885.3200 and 885.3550, provided there are instructions for appropriate respiratory protection for the applicators specified on the product label.

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 proposed EUP is not expected to result in increased dietary exposures of *Bacillus mycoides* isolate J to the general population. The quantity of *Bacillus mycoides* isolate J applied to the beet foliage, 7.5 x 10^{11} spores/acre per application, is small compared to the natural background levels of *Bacillus mycoides* isolate J in agricultural soils which is reported to typically occur at about 10^5 spores per gram. Also, the titer of *Bacillus mycoides* isolate J applied to the foliage declines from 10^6 spores/cm^2 to between 100 and 1,000 spores/cm^2 over a 2–week period. Because the ordinary consumer encounters only the sugar produced from sugar beets, (in which the bacterium is not present), an increased dietary exposure is not foreseen.

There is, in addition, minimal to negligible risk that surface water and, thus, drinking water exposure would occur with the proposed EUP testing. The proposed test sites are at least one-half mile from the nearest surface water. When spray drift or accidental application of *Bacillus mycoides* isolate J over surface water did occur, the concentration of *Bacillus mycoides* isolate J spores in the water had been found to be very low. For example an acre dose of *Bacillus mycoides* isolate J, 7.5 x 10^{11} spores to 100 square meters of surface water 1 meter deep, would result in a concentration of 750 spores per cc of water as noted in the EPA ecological risk assessment for *Bacillus mycoides* isolate J which is based on data submitted by the Montana Microbial Products.

B. Other Non-Occupational Exposure

EPA concludes that dermal or inhalation exposure to the general population as a result of this EUP is not likely to occur, based on information submitted in pesticide tolerance petition 5G6983 indicating that the relevant EUP agricultural sites, which are located in the Red River Valley of North Dakota and Minnesota and in eastern Montana, and which will not exceed 956 acres, are not accessible to individuals other than those conducting this EUP program.

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 method of toxicity. Because there is no indication of mammalian toxicity or pathogenicity resulting from *Bacillus mycoides* isolate J, we conclude that there are no cumulative effects for this bacterium.

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

1. *U. S. population*. The Agency has determined that there is reasonable certainty that no harm will result to the U. S. population from exposure to residues of *Bacillus mycoides* isolate J in connection with the testing for the proposed EUP program. This determination includes all anticipated dietary exposures and other non-occupational exposures for which there is reliable information. Oral ingestion of the organism is unlikely because consumers will purchase only the sugar produced from the sugar beets. This product is not anticipated to contain any spores or cells derived from the treatment of the foliage of the sugar beets. Data submitted in a pulmonary toxicity/pathogenicity study revealed no signs of overt toxicity or pathogenicity in the test animals. The results of an extensive literature search, which included numerous citations of the test organism, yielded no reports of its pathogenicity for mammals. There will be no access to persons other than participants in the program to the test sites for the EUP. The participants in the EUP program are required to wear appropriate respiratory protection.

2. *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, also referred to as margins of exposure (MOEs), 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 MOE will be safe for infants and children.

In this instance, based on all available information, the Agency concludes that there is a finding of no toxicity for *Bacillus mycoides* isolate J. Thus there are no threshhold effects of concern to infants and children when the microbial is used as a fungicide. Accordingly, the Agency concludes that the additional MOE is not necessary to protect infants and children, and that not adding any additional MOE will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient, *Bacillus mycoides* isolate J is not known to exert an influence on the endocrine system.

B. Analytical Method(s)

Analytic methods for *Bacillus mycoides* isolate J that are sufficient to justify the issuance of an Experimental Use Permit (EUP) have been submitted to the Agency.

C. Codex Maximum Residue Level

No codex maximum residue levels exist for the microbial *Bacillus mycoides* isolate J.

VIII. Statutory and Executive Order Reviews

This final rule establishes a 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. 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.

IX. 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: June 6, 2006.

James Jones,

Director, Office of Pesticide Programs.

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

PART180—[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 180.1269 is added to subpart D to read as follows:

§ 180.1269 Bacillus mycoides Isolate J on sugar beets: exemption from the requirement of a tolerance.

Bacillus mycoides isolate J is temporarily exempt from the requirement of a tolerance when used as a fungicide for control of Cercospora Leaf Spot (*Cercospora beticola*) on sugar beets. This temporary exemption from the requirement of a tolerance expires and is revoked on December 31, 2007.

[FR Doc. E6–9282 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0299; FRL–8069–6]

Potassium Silicate; 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 potassium silicate in or on all food commodities when applied/used as a fungicide, insecticide or miticide so long as the potassium silicate is not applied at rates exceeding 1% by weight in aqueous solution and when used in accordance with good agricultural practices. PQ Corporation 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 potassium silicate.

DATES: This regulation is effective June 14, 2006. Objections and requests for hearings must be received on or before August 14, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0299. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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- 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?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0299 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 August 14, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0299, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The telephone number for the Docket is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 27, 2005 (70 FR 43417) (FRL–7719–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 5F6905) by PQ Corporation, P.O. Box 840 Valley Forge, PA 19482–0840. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of potassium silicate. This notice included a summary of the petition prepared by the petitioner PQ Corporation. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(I) of 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 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 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 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.

Potassium silicate is a synthetic compound that is chemically the potassium salt of silicic acid. It is produced by combining pure silica sand (SiO_2) and potash (K_2CO_3 or $NaCO_3$). Silicic acid salts (i.e., silicates) are the most common form of silicon. For the purposes of this tolerance exemption, the Agency has relied on the extensive body of knowledge, data and/or information from the public literature as submitted by PQ Corporation and as researched by the Agency which document the similarity of silica (also known as silicon dioxide) and potassium silicate and support the conclusion that there is reasonable certainty of no harm that will result from the use of potassium silicate as an agricultural pesticide.

Silicon dioxide (silica) has been assessed for its pesticidal uses by the Agency and it was determined that the toxicity of this compound is moderate to low and therefore, the human health risk is low and not unreasonable. Further, silicon dioxide is recognized by the Food and Drug Administration (FDA) to be a Generally-Recognized As Safe (GRAS) substance, as a food additive (21 CFR 182.90 and 182.1711).

Comprehensive reviews and risk assessments have been conducted on silicon dioxide (silica) and its related soluble silicates with regard to its toxicity to human health and have concluded that silica and its soluble silicates (potassium silicate) are low in toxicity and the primary hazard of concern is the corrosive nature of the compound. The corrosive nature of potassium silicate is not of a concern when used as a very dilute solution (less than or equal to 1%). The soluble silicates include: potassium silicate, sodium silicate and sodium metasilicate, the latter of which the Agency has exempted in diluted form from the requirement of a tolerance for use on all food commodities. Additionally, the FDA has determined that sodium silicate and potassium silicate can be used interchangeably which substantiates information in the public literature that the compounds are very similar.

The data submitted and reviewed on the end use pesticide product containing 29.1% w/w potassium silicate caused moderate to low dermal irritation and is classified as an eye irritant due to the high pH of the product. When used as a pesticide (fungicide, insecticide and miticide) the active ingredient is effective at very low concentrations (less than or equal to 1%) and thus the dilution of the active ingredient would reduce the risks to pesticide users. Labeling of such products with the appropriate protective clothing, gloves and eyewear would mitigate the risk of exposure to potassium silicate on pesticide applicators. Potassium silicate residues which may result from its use as an agricultural pesticide would be reduced by washing or processing treated commodities before their consumption; this point is supported by the water solubility of potassium silicate and the possibility of it being washed off treated surfaces by rainfall in the field. Further, potassium silicate is neutralized by stomach acid and primarily excreted in the urine.

The components of potassium silicate are potassium and silicon. Potassium is found in the environment and is an essential element in human and plant nutrition. It is found in many fruits and vegetables consumed by humans. A common soil plant nutrient and fertilizer (as K_2O), potassium comprises approximately 2.59% of the Earth's crust by weight. The primary source of naturally-occurring soluble potassium is from the weathering of potassium containing minerals.

Silicon is ubiquitous in the environment, the second most abundant element in the lithosphere after oxygen. A nutritional element, silica is required for proper and strong growth of mammalian bones. Silica is present naturally in all plant stems and is present in larger amounts in crops such as rice and sugar cane. It comprises approximately 31% of the Earth's crust by weight and is present as dissolved silica, amorphous silica in the solid phase (for example, silica and silica gel (FDA GRAS chemicals), and silica bound to organic matter. In the normal range of soil pH, silicic acid is the major silicate in soil water. In natural waters most dissolved silica results from weathering of silicate minerals. Research demonstrates that commercial soluble silicates rapidly degrade to molecular forms that are indistinguishable from natural dissolved silica (IUCLID, 1995). Beach sand, for example is comprised of nearly 100% silica (Crop Protection handbook, 2003). Additionally, silica is approved by the FDA for use as an anti-caking agent in food.

Potassium silicate immediately breaks down in the presence of water to the potassium and silicate ions which are indistinguishable from natural components. As stated above, potassium silicate is produced by direct fusion of precisely measured portions of pure silica sand (SiO_2) and potash (K_2CO_3) in a fired furnace at temperatures above 1000°C. Solutions of potassium silicate are produced by dissolving alkali silica lumps in water at elevated temperatures. Potassium silicate is classified as GRAS by FDA (21 CFR 182.90 and 21 CFR 182.1711) for limited use in canned potable water as a corrosion inhibiting agent and the EPA has exempted potassium silicate from the requirement of a tolerance when used as an inert ingredient, a surfactant, emulsifier, wetting agent, stabilizer, or inhibitor (40 CFR 180.910). Data and/or information from the public literature demonstrates a long history of safe use of fertilizers containing potassium and silica. (HERA 2005, NOSB/TAP, 2003 and the Silicon Dioxide and Silica Gel RED EPA, 1991, Kant, T., *et al*, 2003, Savant N.K., *et al.*, 1999). Fertilizers used in the agricultural industry contain plant nutrients and micronutrients such as potassium and silicon. Potassium silicate is approved by the USDA as a fertilizer for conventional agriculture and is used on a variety of crops including rice, wheat, barley, sugar cane, melons, grapes and cucurbits (USDA/ERS, 2002, NOSB/TAP, 2003).

As mentioned above, silicon dioxide and its soluble silicates which include potassium silicate have been fully characterized and assessed by the Agency and other notable resources and it has been concluded that silicon dioxide and its related soluble silicates exhibit moderate to low toxicity, the Agency has therefore concluded there is a reasonable certainty of no harm resulting from the use of potassium silicate as an agricultural pesticide. This determination is based on information from the literature which as stated above document the similarity of silica (also known as silicon dioxide) and potassium silicate. This information combined with the fact that the components of potassium silicate (potassium and silica) are already naturally present in the stems of all plants (silica) and naturally in foods supports the Agency's conclusion that there is a reasonable certainty of no harm resulting from the use of potassium silicate as an agricultural pesticide and exposure from the use of potassium silicate as a pesticide will not add to the exposure already present from its natural occurrence, its presence in foods, in the human diet and in the environment.

A. Acute Toxicity

The registrant did not submit any toxicity data testing the technical grade of the active ingredient. Data waivers were requested by the registrant and granted by the Agency based on the body of extensive knowledge from the public literature and as researched by the Agency. The toxicity of the soluble silicates via oral toxicity, teratogenicity and genotoxicity were tested on the Technical Grade of the Active Ingredient (TGAI) and reported and the Agency has relied upon this information to support its decision to grant the waiver requests for these studies. Acute toxicity data were submitted using the end-use product as the test material which is approximately a $\frac{1}{3}$ dilution of the technical grade of the active ingredient. Requests for data waivers were granted for additional toxicity studies described below. These data waiver requests were granted based on the findings from comprehensive reviews and risk assessments conducted on silicon dioxide (silica) and its related soluble silicates (potassium silicate) with regard to its toxicity to human health and the conclusion that silicon dioxide and its related soluble silicates have moderate to low toxicity, and therefore, the Agency concludes that there is a reasonable certainty of no harm resulting from the use of potassium silicate. The data submitted and waivers that were granted are as follows:

Acute oral rat OPPTS Harmonized Guideline 870.1100; Master Record Identification (MRID) Number 46434903). LD_{50} = 5,000 milligrams/kilogram (mg/kg) (29.1% potassium silicate aqueous solution). The test material is classified as a Toxicity Category IV for acute oral toxicity and demonstrates that a dilution of the active ingredient to a level that is comparable to the concentration of potassium silicate in the proposed end-use product eliminates the potential of the active ingredient to cause acute toxic effects. There were no adverse effects reported at 5,000 mg/kg.

Technical grade of the active ingredient. A request to waive this data requirement was submitted by the registrant. The Agency has granted this data waiver based on: (1) Data from the public literature which shows soluble silicates have a moderate to low acute toxicity by the oral route (HERA 2005), (2) potassium silicate, a soluble silicate that is both chemically and toxicologically similar to silicon dioxide (silica) which has been fully characterized, assessed, and therefore determined by the Agency that silicon dioxide and its related soluble silicates pose no unreasonable adverse effects to human health when used as an agricultural pesticide and (3) potassium and silica are already present in the human diet as they are contained naturally in various crops.

Acute dermal rat OPPTS 870.1200; (MRID 4643902). LD_{50} = 5,000 mg/kg (29.1% potassium silicate aqueous solution). The test material is classified as a Toxicity Category IV for acute dermal toxicity and demonstrates that a dilution of the active ingredient to a level that is comparable to the concentration of potassium silicate in the proposed end use product will be moderately irritating to the skin.

Technical grade of the active ingredient. Section 158.690(c)(2)(I) states this test is not required if the test material is corrosive to skin. Therefore, this test was not required. However, this active ingredient is classified Toxicity Category I on the basis of potential dermal irritation effects.

Acute inhalation rat OPPTS 870.1300; (MRID 46434906). LC_{50} >2.06 milligrams per liter (mg/L) (29.1% potassium silicate aqueous solution). The test material is classified as a Toxicity Category IV for acute inhalation toxicity and demonstrates that a dilution of the active ingredient to a level that is comparable to the concentration of potassium silicate in the proposed end use product will not cause acute inhalation effects at greater than 2.06 mg/L.

Technical grade of the active ingredient. This test is only required if the product consists of a respirable material. Since potassium silicate does not consist of a respirable material under normal conditions of use, this test is not required.

B. Genotoxicity, Immune Response, Mutagenicity, Developmental, Oncogenicity, Subchronic and Chronic Toxicity

The applicant requested to waive the data requirements below and submitted a summary of public literature to satisfy the data requirements for 90–day oral toxicity (OPPTS 870.3100), genotoxicity (OPPTS 870.5100; 870.5300; 870.5375), teratogenicity (OPPTS 870.3700) and immunotoxicity (OPPTS 880.3550) for the active ingredient. Potassium silicate waiver requests were submitted (MRID 46434701). As mentioned above, the Agency has determined that the data requirements were met by the submission of public literature. The public literature demonstrates that potassium silicate has low toxicity by the oral route when tested as the TGAI because potassium silicate is neutralized by stomach acid and primarily excreted in the urine. The high pH of the pesticide product may cause eye and skin irritation to humans. However, risks to humans will be reduced by dilution of the pesticide product and further mitigated by the use of protective personal equipment.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of 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

1. *Food.* Potassium is found in the environment and is present in the cells of humans and plants and is therefore an essential element in human and plant nutrition. It is found in many fruits and vegetables consumed by humans. Humans require an adequate supply of potassium from consumption of foods for healthy growth and development. Humans consume daily many sources of potassium, including a variety of fruits, vegetables and beverages such as barley, bananas, plums, apricots, strawberries, oranges, apples, grapes, spinach, potatoes, carrots, celery, tomatoes, lettuce, cucumbers, milk, fruit juices, coffee, white wine and light beers, etc. The average potassium content of the above fruits and vegetables ranges from 2.4 K/kg (tomato) - 3.7 K/kg (banana).

As mentioned above, potassium is a common soil plant nutrient and fertilizer (as K_2O), and comprises approximately 2.59% of the Earth's crust by weight. Silicon is a ubiquitous mineral nutrient in the environment (soil, water) and the second most abundant element in the lithosphere after oxygen. A nutritional trace element, silicon is required for proper and strong growth and development of mammalian bones. In plants, silicic acid ($Si(OH)_4$) is rapidly absorbed. Once absorbed, silicic acid is readily circulated throughout the plant and deposited as silicon dioxide. Consequently exposure to soluble silica occurs on a daily basis and is a property of all plant products in the human diet. The concentration of silicon in vegetable plants varies greatly with cereals and grasses containing the highest concentrations (0.2-2.0%).

Good agricultural practice when using potassium silicate means it will most likely be used in aqueous solutions because application of pure potassium silicate to crops is likely to be corrosive to crops since the active ingredient is a known corrosive. When applied to food crops at concentrations not to exceed 1% by weight of potassium silicate in aqueous solution, it is highly unlikely there will be any residues of significance in or on food.

Further dilution by tank mixing with water of a pesticide product containing the active ingredient at 29% w/w of potassium silicate before application of the pesticide reduces the amount of active ingredient (to concentrations not to exceed 1% active ingredient) that will be on the crop.

Furthermore, potassium silicate breaks down in the presence of water to potassium and silicate ions, both of which occur naturally in animals and plants. Concentrations of potassium silicate as a pesticide in foliar sprays and nutrient solutions are dominated by silicic acid, which as mentioned above, is readily absorbed by plants.

Therefore, given the use dilution of the pesticide product and other good agricultural practices as required on product labels, the likely dietary exposures to potassium silicate from the pesticidal uses are not expected to add significantly to those levels of potassium silicate already found in foods, beverages, and in drinking water as a result of conventional agriculture and its natural occurrence in the environment.

2. *Drinking water exposure.* Because potassium silicate breaks down into potassium and silicate ions in the presence of water, there will be no residues of potassium silicate in drinking water from its use as a pesticide. The Agency does not expect the resulting potassium and silicate ions resulting from this breakdown process will add significantly to the level of potassium and silica presently in the water.

Potassium and silicon dioxide are ubiquitous in the environment, and the uses of soluble silicates are widespread in dishwashing soaps, other soaps, and detergents. Potassium silicate is classified by the FDA as a GRAS substance (21 CFR 182.90 and 21 CFR 182.1711) for limited use in canned potable water as a corrosion inhibiting agent. Moreover, both potassium and silicon are already present in natural waters. The potassium (natural) content of drinking water varies greatly depending on its source and may be larger in mineral and spa waters than ordinary tap water. On average, the daily water consumption by adults supplies less than 0.1% of their potassium intake (European Fertilizer Manufacturers Association, 1997). In natural waters most dissolved silica results from weathering of silicate minerals and it has been demonstrated that commercial soluble silicates rapidly degrade to molecular forms that are indistinguishable from natural dissolved silica. Therefore, because of the levels at which potassium and silica (silicon dioxide) are already present in the water supply, the Agency does not expect that the use of potassium silicate as a pesticide will result in detectable exposures aside from what is currently in the environment.

B. Other Non-Occupational Exposure

1. *Dermal exposure.* Non-occupational dermal exposures to potassium silicate when used as a pesticide are expected to be negligible because it is limited to agricultural use.

2. *Inhalation exposure.* Non-occupational inhalation exposures to

potassium silicate when used as a pesticide are expected to be negligible because it is limited to agricultural use and will be used as a spray.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.

The information available at this time indicates that potassium silicate when applied to food crops at a rate less than or equal to 1% of potassium silicate by weight in aqueous solution does not have a toxic effect. Therefore, cumulative effects from the residues of this product are not anticipated.

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

1. *U.S. population*. The Agency has determined that there is reasonable certainty that no harm will result to the U.S. population from aggregated exposure to residues of potassium silicate when used in an aqueous solution in which the potassium silicate does not exceed 29.1% by weight. This includes all anticipated dietary exposures and other exposures for which there is reliable information. The Agency arrived at this conclusion based on the anticipated low acute exposure estimates from its pesticidal use, the low mammalian toxicity in its diluted form, the widespread exposure to potassium and silica, from foods in the human diet, and the similarity both chemically and toxicologically to silicon dioxide which has already been fully characterized and assessed, and found that there is reasonable certainty of no harm that will result from the use of silicon dioxide and its related soluble silicates (potassium silicate) as an agricultural pesticide.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects. Margins of exposure are often referred to as uncertainty or safety factors, and are used to account for potential prenatal and postnatal toxicity and any lack of completeness of the data base. Based on available data and other information, EPA may determine that a different MOE will define a level of concern for infants and children or that a MOE approach is not appropriate. Based on all the available information the Agency reviewed on potassium silicate, including a lack of threshold effects, the Agency concluded that potassium silicate, in its diluted form, is practically non-toxic to mammals, including infants and children. Since there are no effects of concern, the provision requiring an additional margin of safety does not apply.

VII. Other Considerations

A. Endocrine Disruptors

Based on available data, no endocrine system-related effects have been identified with consumption of potassium silicate. In addition, there is no evidence to suggest that potassium silicate functions in a manner similar to any known hormone.

B. Analytical Method(s)

The Agency proposes to establish an amendment to the exemption from the requirement of a tolerance without any numerical limitation for residues since it has determined that residues resulting from the pesticidal uses of potassium silicate would be so low as to be indistinguishable from the naturally occurring silicates that are ubiquitous in the environment.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels for this chemical.

VIII. Conclusions

Based on the toxicology data submitted, there is reasonable certainty no harm will result to the U.S. population including infants and children from aggregate exposure of residues of potassium silicate when the product is used in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures about which there is reliable information. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of potassium silicate in or on all food commodities so long as the potassium silicate is not applied to food crops at rates that exceed 1% potassium silicate by weight in an aqueous solution.

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described underTitle II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the 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 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.

X. 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: May 31, 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 180.1268 is added to subpart D to read as follows:

§ 180.1268 Potassium silicate; exemption from the requirement of a tolerance.

Potassium silicate is exempt from the requirement of a tolerance in or on all food commodities so long as the potassium silicate is not applied at rates exceeding 1% by weight in aqueous solution and when used in accordance with good agricultural practices.

[FR Doc. E6–8939 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 05–211; FCC 06–78]

Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission, on its own motion, clarifies certain aspects of the Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures. Among other things, the Commission clarifies that the expansion of the unjust enrichment payment schedule to ten years applies only to licenses granted on or after April 25, 2006. This ensures that retroactive penalties are not imposed on pre-existing designated entities.

DATES: Effective June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Carter at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order on Reconsideration of the Second Report and Order* (*Order on Reconsideration*) released on June 2, 2006. The complete text of the *Order on Reconsideration* including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Order on Reconsideration* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, for example, FCC 06–78. The *Order on Reconsideration* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions.*

I. Introduction

1. The Commission, on its own motion, released an Order on Reconsideration which clarifies certain aspects of the *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, Second Report and Order* (*Designated Entity Second Report and Order*), 71 FR 26245, (May 4, 2006). The Commission also addresses certain procedural issues raised in filings submitted in response to the *Designated Entity Second Report and Order.*

II. Background

2. In the *Further Notice of Proposed Rule Making* in this proceeding (*FNPRM*), 71 FR 6992 (February 10, 2006), the Commission sought comment on a proposal by a commenter that the Commission restrict the award of designated entity benefits to designated entities that have material relationships with large in-region incumbent wireless service providers. The Commission asked for comment on each of the elements of this proposal, including what types of material relationships should trigger a restriction on the availability of designated entity benefits and what types of entities other than large in-region incumbent wireless service providers should be covered.

3. In the *Designated Entity Second Report and Order*, the Commission revised its Part 1 rules to include certain material relationships as factors in determining designated entity eligibility. Specifically, the Commission adopted rules to limit the award of designated entity benefits to any

applicant or licensee that has impermissible material relationships or an attributable material relationship created by certain agreements with one or more other entities for the lease or resale (including under a wholesale arrangement) of its spectrum capacity. The Commission found that these additional eligibility restrictions were necessary to meet its statutory obligations and to ensure that, in accordance with the intent of Congress, every recipient of the Commission's designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public. In particular, the Commission determined that the relationships underpinning such leasing and resale agreements underscored the need for stricter regulatory parameters to ensure that benefits were reserved to provide opportunities for designated entities to become robust independent facilities-based service providers with the ability to provide new and innovative services to the public, and to prevent the unjust enrichment of unintended beneficiaries.

4. In the *FNPRM*, the Commission also sought comment on whether, if it adopted a new restriction on the award of bidding credits to designated entities, the Commission should adopt revisions to its unjust enrichment rules. The Commission asked over what portion of the license term the unjust enrichment provisions should apply if it decided to require reimbursement by licensees that, either through a change of material relationships or assignment or transfer of control of the license, lose their eligibility for a bidding credit pursuant to any eligibility restriction that it might adopt. In the *Designated Entity Second Report and Order*, the Commission adopted rule modifications to strengthen its unjust enrichment rules in order to better deter entities from attempting to circumvent its designated entity eligibility requirements and to recapture designated entity benefits when ineligible entities control designated entity licenses or exert impermissible influence over a designated entity. Specifically, the Commission adopted a ten-year unjust enrichment schedule for licenses acquired with bidding credits.

5. Finally, in the *Designated Entity Second Report and Order*, in order to ensure its continued ability to safeguard the award of designated entity benefits, the Commission explained how it will implement its rules concerning audits, particularly with respect to designated entities that win licenses in the upcoming AWS auction, and refined its rules with respect to the reporting obligations of designated entities. In the *Order on Reconsideration*, the Commission provides guidance on these implementation rules as well as on the substantive rules mentioned above.

6. Several parties have submitted filings in this docket addressing various aspects of the *Designated Entity Second Report and Order*. Among the filing are a petition for expedited reconsideration and two supplements.

III. Discussion

A. Section 309(j)(3)(E)(ii)

7. Certain parties assert that the Commission's application of the new designated entity rules to the licenses offered in Auction No. 66 violates section 309(j)(3)(E)(ii) of the Communications Act, a directive that the Commission ensure that, after it issues bidding rules, interested parties have sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services. The Commission disagrees.

8. The Commission rejects the basic assumption that the new designated entity rules implicate section 309(j)(3)(E)(ii) at all and concludes that while that provision instructs the Commission to promote the objective of ensuring that interested parties after the issuance of bidding rules have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services, the new designated entity rules do not constitute bidding rules for purposes of section 309(j)(3)(E)(ii). The Commission has explained that this provision does not require the Commission to postpone an auction until every external factor that might influence a bidder's business plan is resolved with absolute certainty. Rather, the provision applies to auction-specific information and specific mechanisms relating to day-to-day auction conduct. The new designated entity rules included neither auction-specific information nor specific mechanisms relating to day-to-day auction conduct. Therefore, the Commission concluded that it does not believe that they fall under the rubric of section 309(j)(3)(E)(ii).

9. The Commission also notes that parties were on notice for many months of the Commission's intent to apply the changes to the designated entity rules adopted in the proceeding to licenses issued in Auction No. 66. The Commission finds that parties had ample warning that a change in the designated entity rules was coming and should have been prepared to react as soon as the new rules were announced. The Commission concludes that while parties complain that the then-existing short-form filing deadline for Auction No. 66 was two weeks after the release of the new designated entity rules, auction applicants are permitted, even after the short-form filing deadline, to take a variety of steps to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services, including adding non-controlling investors at any time before or during the auction.

10. The Commission notes that it has rescheduled the deadline for filing short-form applications to participate in Auction No. 66, and interested parties have until June 19, 2006, or 54 days after the release of the *Designated Entity Second Report and Order* to file their applications. The auction itself is scheduled to take place on August 9, 2006. The Commission also notes that even assuming that section 309(j)(3)(E)(ii) applies to these rules, this new schedule provides applicants with more than sufficient time to adjust business plans and reevaluate market conditions in light of the new designated entity rules.

11. The Commission asserts that section 309(j)(3) requires the Commission to balance several statutory objectives and that the Commission promote several other objectives in exercising its competitive bidding authority, including the rapid deployment of new technologies and services to the public, promotion of economic opportunity and competition, recovery for the public of a portion of the value of the spectrum and avoidance of unjust enrichment, and efficient and intensive use of the spectrum. The Commission emphasizes that two of these other statutory objectives are of particular importance here: (1) Promoting the development and rapid deployment of new technologies, products, and services for the benefit of the public; and (2) avoiding unjust enrichment. The Commission believes that these objectives impose on it an obligation to avoid unnecessary or unreasonable delays of Auction No. 66. The Commission has evidence that potential bidders have an immediate need for the licenses that will be offered in Auction No. 66 and that delaying the auction would impair the rapid deployment of affordable wireless service to the public. Indeed, there is evidence in the record that suggests that delaying the auction further will impede the ability of smaller entities to successfully obtain licenses in Auction No. 66, even though parties claim that

the Commission's new rules will deter small businesses from participating in the auction. The alternative proposed by the various parties of holding Auction No. 66 as currently scheduled but setting aside the Commission's new designated entity rules with respect to the licenses offered in that auction, would put the Commission in the position of neglecting its statutory duty to avoid unjust enrichment by assuring that designated entity benefits go to those entities that use their licenses to provide facilities-based services for the benefit of the public. The additional alternative proposed by parties of delaying the auction to allow further comment on the rules adopted in the *Designated Entity Second Report and Order* would constitute unreasonable delay in light of its statutory obligation to promote the development and rapid deployment of services for the benefit of the public. For all of these reasons, the Commission continues to believe that it has reasonably balanced the objectives set forth in section 309(j)(3) and that proceeding with the auction as scheduled would best serve the public interest.

B. Material Relationships

12. *Notice.* Certain parties argue that the Commission violated the Administrative Procedure Act by adopting the new material relationship rules. They contend, first, that the Commission failed to give sufficiently specific notice, and thus sufficient opportunity for comment, on the new restrictions on leasing and resale arrangements. Second, they argue that the Commission made certain aspects of the rules immediately effective without the requisite statutory notice. The Commission finds both claims unconvincing.

13. An agency is not required to adopt a final rule that is identical to the proposed rule. In fact agencies are encouraged to modify proposed rules as a result of the comments they received. As long as parties could have anticipated that the rules ultimately adopted was possible, it is considered a logical outgrowth of the original proposal, and there is no violation of the APA's notice requirements.

14. Applying these standards, it is clear that there was ample notice of the new material relationship rules in this case. The *FNPRM* emphasized the Commission's ongoing commitment to prevent companies from circumventing the objectives of the designated entity eligibility rules and to ensuring that its small business provisions are available only to bona fide small businesses. The Commission noted the concern raised in the record that those rules did not adequately prevent large corporations from structuring relationships in a manner that allows them to gain access to benefits reserved for small businesses. While the Commission tentatively proposed adoption of the parties rule, the Commission sought comment on whether other material relationships should trigger a restriction on the award of designated entity benefits. In the *FNPRM*, the Commission asked among other things whether limiting the prohibited material relationships to large incumbent wireless service providers or entities with significant interests in communications services would be sufficient to address any concerns that its designated entity program may be subject to potential abuse from larger corporate entities.

15. The *FNPRM* made clear that the Commission was considering several approaches to defining a material relationship and broadly sought comment on the specific nature of the relationship that should trigger such a restriction.

16. While parties claim that they had no notice that an arrangement such as lease or resale could constitute a material relationship, the *FNPRM* specifically contemplated it. The Commission noted that in its *Secondary Markets* proceeding, it had concluded that certain spectrum manager leases between a designated entity licensee and a non-designated entity lessee would cause the spectrum lessee to become an attributable affiliate of the licensee, thus rendering the licensee ineligible for designated entity benefits and making such a spectrum lease impermissible. The Commission then sought comment on whether it should follow a similar approach. Commenting parties clearly understood that the Commission was contemplating rule changes that would extend beyond material relationships with incumbent wireless carriers.

17. After reviewing the record, the Commission concluded that certain agreements between designated entities and others are generally inconsistent with Congress's legislative intent. Specifically, the Commission explained that where an agreement concerns the actual use of the designated entity's spectrum capacity, it is the agreement, as opposed to the party with whom it is entered into, that causes the relationship to be ripe for abuse and creates the potential for the relationship to impede a designated entity's ability to become a facilities-based provider, as intended by Congress. Accordingly, the Commission adopted rules in the *Designated Entity Second Report and Order* to limit the award of designated entity benefits to any applicant or licensee that has impermissible material relationships or an attributable material relationship created by agreements with one or more other entities for the lease or resale (including under a wholesale arrangement) of its spectrum capacity.

18. These rules were a logical outgrowth of the questions the Commission asked in the *FNPRM* and are well within the scope of the inquiry initiated there. The fact that the Commission elected to adopt a definition of material relationship that differed from that specifically proposed by one of the parties does not mean that the Commission failed to provide notice of the rule modifications it ultimately adopted.

19. The Commission disagrees with the contention by various parties that it made certain aspects of the rules immediately effective and finds that such an argument is based on a gross misreading of the rule. The reference to the date of the release in the new rule did not impose any consequences on parties immediately following the date of release. Rather, once the rules became effective—30 days after **Federal Register** publication—actions taken following the release might affect a party's status, but only if not undone in the period before the rule became effective. Thus, parties had the requisite period of notice to adjust in response to the new rule.

20. *Requests for General Clarification.* After releasing the *Designated Entity Second Report and Order,* Commission staff received a number of questions seeking general advice regarding how the Commission intended to implement its rule modifications. The Commission therefore clarifies how it will consider: (1) The meaning of spectrum capacity in the context of material relationships, (2) grandfathering, and (3) applicability of the rules to particular services.

21. *Material Relationships.* The Commission noted that a number of questions have been raised regarding how the Commission will evaluate impermissible and attributable material relationships for the purposes of determining eligibility for both designated entity benefits and the imposition of unjust enrichment. In the *Designated Entity Second Report and Order*, the Commission concluded that an applicant or licensee has impermissible material relationships when it has agreements with one or more other entities for the lease (under either spectrum manager or *de facto* transfer leasing arrangements) or resale (including under a wholesale arrangement) of, on a cumulative basis,

more than 50 percent of the spectrum capacity of any individual license. The Commission decided that such impermissible material relationships would render the applicant or licensee (i) ineligible for the award of future designated entity benefits, and (ii) subject to unjust enrichment on a license-by-license basis. The Commission further concluded that an applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity, including entities and individuals attributable to that entity, for the lease (under either spectrum manager or *de facto* transfer leasing arrangements) or resale (including under a wholesale arrangement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license that is held by the applicant or licensee. The Commission decided that such an attributable material relationship would be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for future designated entity benefits, and (ii) liability for unjust enrichment on a license-by-license basis. As stated in the *Designated Entity Second Report and Order*, the Commission's policy is to assure that a designated entity preserves at least half of the spectrum capacity of each license for which the designated entity has been awarded and retained designated entity benefits in exchange for the provision of service as a facilities-based provider for the benefit of the public.

22. *Meaning of Spectrum Capacity.* In the *Order on Reconsideration,* the Commission also clarifies how it will measure compliance with the thresholds it adopted in its definitions of material relationships. The restrictions it adopted regarding impermissible and attributable material relationships require a designated entity to assess the percentage of its spectrum capacity that will be leased (under either spectrum manager or de facto transfer leasing arrangements) or subject to resale (including under a wholesale arrangement). In response to request for clarification, the Commission provides additional guidance on determining the percentage of a designated entity's spectrum capacity involved in lease or resale agreements.

23. The Commission observes, as an initial matter, that there are a number of ways spectrum capacity could be defined. It would be difficult for the Commission to enumerate every possible means by which a licensee could lease or make its spectrum capacity available to another party to resell. By adopting spectrum capacity as a measurement, the Commission sought to provide licensees with some flexibility to tailor their agreements to their business needs. The Commission is reluctant to employ only a single measure of spectrum capacity. Nevertheless, to assist designated entities as they evaluate secondary market transactions, the Commission clarifies that if they meet the spectrum capacity thresholds on an MHz* pops basis, the Commission will find them in compliance. The MHz* pops basis is consistent with the Commission's current method of apportioning unjust enrichment when licenses are partitioned and/or disaggregated and provides a meaningful measure here. However, while meeting the spectrum capacity thresholds on an MHz * pops basis is sufficient to comply with the Commission's rules, it is not the only means of compliance. In other words, any entity meeting the thresholds on an MHz* pops basis will be found in compliance, but entities not meeting the thresholds on an MHz* pops basis may also be found in compliance based on other factors. The MHz* pops measure is intended as a safe harbor; it is not meant to limit complying with the rules in other ways that the Commission cannot fully anticipate at this time. The Commission recognizes that its decision not to enumerate all other means of compliance necessarily leaves some uncertainty, but thinks that the MHz* pops safe harbor provides sufficient certainty while allowing licensees and the Commission flexibility to conduct a more contextual analysis.

24. *Grandfathering.* In the *Designated Entity Second Report and Order,* the Commission explained that it would not employ its new restrictions to reconsider the eligibility for any designated entity benefits that had been awarded to licensees prior to the April 25, 2006, release date of the decision or to determine eligibility for designated entity benefits in an application for a license, an authorization, or an assignment or transfer of control, or a spectrum lease that had been filed with the Commission before, and was still pending approval on, that date.

25. The Commission received a number of inquiries regarding how the Commission will consider future agreements that were agreed upon prior to the release date of its decision. The Commission therefore offers the following explanation: Agreements entered into by a designated entity—and, to the extent required, approved by or pending approval by the Commission—no later than April 24, 2006 that concern the lease or resale by the designated entity of its spectrum after the release date of the *Designated Entity Second Report and Order* are grandfathered for the purposes of existing eligibility benefits and the imposition of unjust enrichment to the extent that the designated entity has no discretion as to the future lease or resale. The applicability of grandfathering to the future lease or resale of spectrum in a pre-existing agreement depends on whether or not the provision was a ''done deal'' such that, prior to April 25, 2006, the decision to lease or to allow the resale of spectrum was no longer within the discretion of the designated entity.

26. *Applicability of Material Relationships Rules to Certain Services.* The Commission notes that there has also been some question about the applicability of the new material relationship rules with regard to agreements to lease spectrum in the 700 MHz Guard Band Manager Service and those other services not covered by the Commission's secondary market leasing policies. Consequently, the Commission clarifies that the new material relationship rules will apply only to those services in which leasing are permitted under the Commission's secondary markets rules.

C. Unjust Enrichment

27. *Notice.* Various parties argue that the Commission violated the Administrative Procedure Act by giving inadequate notice and opportunity for comment prior to adopting new unjust enrichment provisions. The Commission concludes that this claim is refuted by the plain language of the *FMPRM* and by the parties' own filings in response to it.

28. In the *FMPRM*, the Commission observed that the existing rules require the payment of unjust enrichment when an entity that acquires its license with small business benefits loses its eligibility for such benefits or transfers a license to another entity that is not eligible for the same level of benefits. The Commission also noted that a commenter had proposed extending this reimbursement obligation to any licensee that acquires a license with the help of a bidding credit but then makes a change in its material relationships or seeks to assign or transfer control of the license to an entity that would result in its loss of eligibility for the bidding credit pursuant to any eligibility restriction that the Commission adopt. According to the commenter strengthening the unjust enrichment rules was necessary to fulfill the Commission's statutory obligation to

prevent unjust enrichment. The *FMPRM* sought comment both on the commenter's specific proposal and on whether the Commission should seek to strengthen the unjust enrichment rules in some other manner. The Commission also asked a series of questions about the scope of the reimbursement obligation, seeking comment on whether it should be triggered only where the licensee takes on new investment or also when it enters into any new material financial relationship or material operational relationship that would have rendered the licensee ineligible for a bidding credit. Finally, while the Commission noted the commenter's proposal for a five-year reimbursement obligation, the Commission did not tentatively propose adopting it. Instead, it asked over what portion of the license term should the unjust enrichment provisions apply.

29. Notwithstanding the broad scope of the questions asked by the *FMPRM*, the commenter claims that parties had no notice that the Commission was contemplating any changes to its unjust enrichment rules. The *FMPRM* makes clear the Commission did not put itself in such a straitjacket, and it would have been unreasonable for any party to believe that the Commission had done so. Nowhere did the Commission say it would consider only a five-year reimbursement obligation or that it would artificially limit the rule changes only to relationships with particular entities. Indeed, the comments filed in response to the *FMPRM* demonstrate that parties did in fact understand the scope of the contemplated changes to the unjust enrichment rules.

30. The changes the Commission ultimately adopted to its unjust enrichment rules were clearly within the scope of the revisions contemplated by the *FMPRM* or, at a minimum, a logical outgrowth of them. Indeed, had the Commission only revised the five-year unjust enrichment schedule for certain types of transactions but not for others, the Commission would have risked creating an illogical scheme that would have created an incentive for designated entities to prioritize certain types of transactions over others. For all of these reasons, the Commission rejects the parties' APA notice claim.

31. *Impact of New Rules.* In the *Designated Entity Second Report and Order,* the Commission adopted changes to its unjust enrichment rules to ensure that designated entity benefits go to their only intended beneficiaries. The Commission agreed with commenters that the adoption of stricter unjust enrichment rules would increase the probability that the designated entity would develop into a competitive facilities-based service provider and deter speculation by those who do not intend to offer service to the public, or who intend to use bidding credits to obtain a license at a discount and later to sell it at the full market price for a windfall profit.

32. The Commission therefore modified its unjust enrichment rules to expand the unjust enrichment payment schedule from five to ten years. Further, the Commission required that it be reimbursed for the entire bidding credit amount owed if a designated entity loses its eligibility for a bidding credit prior to the filing of the applicable construction notifications. Specifically, the Commission adopted the following ten-year unjust enrichment schedule for licenses acquired with bidding credits. For the first five years of the license term, if a designated entity loses its eligibility for a bidding credit for any reason, including but not limited to, entering into an impermissible material relationship or an attributable material relationship, seeking to assign or transfer control of a license, or entering into a *de facto* transfer lease with an entity that does not qualify for bidding credits, 100 percent of the bidding credit, plus interest, is owed. For years six and seven of the license term, 75 percent of the bidding credit, plus interest, is owed. For years eight and nine, 50 percent of the bidding credit, plus interest, is owed, and for year ten, 25 percent of the bidding credit, plus interest, is owed. The Commission also imposed a requirement that the Commission must be reimbursed for the entire bidding credit amount owed, plus interest, if a designated entity loses its eligibility for a bidding credit for any reason, including but not limited to, entering into an impermissible material relationship or an attributable material relationship, seeking to assign or transfer control of a license, or entering into a *de facto* transfer lease with an entity that is not eligible for bidding credits prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the license term have been met.

33. Various parties assert that the new provisions will eliminate designated entities' access to capital and financing. For several reasons, these claims do not justify reconsideration of the recent rule changes. The parties assert that designated entities access to capital will be eliminated by the 10-year unjust enrichment payment schedule because private equity and other investors frequently adhere to three to seven year investment horizons, with five years being an accepted average. Given the Commission's recent finding that access to Educational Broadcast Service spectrum for longer than fifteen years is essential to attract the capital needed to deploy facilities for spectrum based services, the Commission is not convinced that the appropriate investment horizon for designated entity status should be only three to seven years. Designated entity benefits are offered to ensure that small businesses have an opportunity to participate in the provision of spectrum-based services, not to ensure the short-term exit strategies of parties providing capital. The Commission strengthened its rules to ensure that those that receive such benefits were properly motivated to build out their spectrum and provide services for the benefit of the public by closing off the opportunity to sell licenses awarded with bidding credits for huge profits without ever having to provide actual facilities-based services. Predictions regarding the new rules' effect on venture capital alone are not a basis for reconsidering the rules.

34. In the *Order on Reconsideration,* the Commission noted that even if some sources of financing and capital would no longer be available on the same terms as before, the adoption of new rules is not arbitrary and capricious, or otherwise contrary to law. The Commission must balance the various statutory objectives of Section 309(j), and based on the record in response to the *FMPRM* and many years of experience, the Commission found that the new unjust enrichment rules are necessary to increase the probability that designated entities will develop into facilities-based providers of service for the benefit of the public. It is neither the Commission's statutory responsibility nor its intent merely to provide small businesses with generalized economic opportunities in connection with spectrum licenses. The Commission has not been charged with providing entities with a path to financial success, but rather with an obligation to facilitate opportunities for small businesses to provide spectrum based services to the public. Therefore, it is the Commission's responsibility to create strong incentives for designated entities to use spectrum to provide facilities-based service to the public instead of holding their licenses and selling them for profit. The Commission concluded that it believes that its new rules create appropriate incentives in this regard while still affording designated entities the opportunity to achieve financial success by providing service to the public. It is important to

remember that designated entities are provided with bidding credits in order to enable them to obtain spectrum and then provide facilities-based service to the public. To the extent that they do not do so, but instead sell their licenses to others in the marketplace at market prices, the Commission believes that it is reasonable that they no longer be allowed to enjoy the benefit of obtaining spectrum at below-market prices.

35. *Clarification.* In the *Order on Reconsideration,* the Commission clarifies its statement in the *Designated Entity Second Report and Order* that retroactive penalties will not be imposed on pre-existing designated entities. Specifically, the Commission clarifies that the newly-adopted ten-year unjust enrichment schedule applies only to licenses that are granted after the release of the *Designated Entity Second Report and Order.* Likewise, the requirement that the Commission be reimbursed for the entire bidding credit amount owed if a designated entity loses its eligibility for a bidding credit prior to the filing of the notifications informing the Commission that the construction requirements applicable at the end of the license term have been met applies only to those licenses that are granted on or after the April 25, 2006 release date of the *Designated Entity Second Report and Order.* The Commission also makes corresponding corrections to section 1.2111 of its rules.

D. Review of Agreements, Annual Reporting Requirements, and Audits

36. In the *Order on Reconsideration,* the Commission also clarifies and emphasizes certain aspects of section 1.2114, its newly-adopted rule relating to reportable eligibility events. As the rule expressly states, a designated entity must seek Commission approval for all reportable eligibility events. In the *Designated Entity Second Report and Order,* the Commission emphasizes that section 1.2114 requires prior Commission approval for a reportable eligibility event. The Commission also clarifies that a reportable eligibility event includes any event that might affect a designated entity's ongoing eligibility, under either its material relationship or controlling interest standards, and it corrects new section 1.2114(a) accordingly. Although the Commission affirms that it has delegated authority to the Wireless Telecommunications Bureau (Bureau) to implement its rule changes on reporting, the Commission anticipates that the Bureau's procedures will provide the means by which parties will apply for approval of all such arrangements. Such approval may require modifications to the terms of the parties' arrangements or unjust enrichment payments based on the impact of such arrangements on designated entity eligibility. The Commission also affirms its conclusions in the *Designated Entity Second Report and Order* with regard to the implementation of its regulations relating to the review of long-form applications and agreements to determine designated entity eligibility under the controlling interest standard. The Commission also affirms its event-based and annual reporting requirements as well as its commitment to audit the eligibility of every designated entity that wins a license in the AWS auction at least once during the initial term.

E. Regulatory Flexibility Act

37. In the *Order on Reconsideration,* the Commission disagrees with the claims of the various parties that its recently adopted rules violate the Regulatory Flexibility Act (RFA). Among other things, the parties assert that the Commission failed to provide adequate notice in the Initial Regulatory Flexibility Analysis (IRFA) about the scope of the proposed rules, their application to current designated entity licensees, or the ten-year unjust enrichment schedule for licenses acquired with bidding credits. The Commission notes as an initial matter that the IRFA is not subject to judicial review. Section 611 of the RFA expressly prohibits courts from considering claims of non-compliance with the initial regulatory flexibility analysis requirement of RFA section 603. Moreover, the parties have not articulated the legal basis for their claim that a purported lack of notice constitutes an independent violation of the RFA. In any case, the Commission has demonstrated above that the *FNPRM* provided ample notice of the possible rules changes at issue. For the same reason, any claim about the sufficiency of the Final Regulatory Flexibility Analysis (FRFA) based on charges of inadequate notice of lack of opportunity of comment is also without merit.

38. The Commission also disagrees with the claims of the various parties that the Commission failed to describe significant alternatives to the rules it adopted in order to minimize any significant economic impact on small entities as required by the RFA. The Final Regulatory Flexibility Analysis (FRFA) in the *Designated Entity Second Report and Order* referred to the substantive part of the Order, which discussed in great depth the impact of the rules on small businesses, alternatives considered, and why the Commission adopted the rules at issue. Reiteration of the discussion of the impact on small businesses in the FRFA is not required by the RFA and such reiteration would have been repetitive here, as analyses of alternatives related to small businesses infuse the decision. In adopting the Commission's rule modifications to better achieve Congress's plan, the Commission fully explained that it was finding a reasonable balance between the competing goals of first, providing designated entities with reasonable flexibility in being able to obtain needed financing from investors and, second, ensuring that the rules effectively prevent entities ineligible for designated entity benefits from circumventing the intent of the rules by obtaining those benefits indirectly, through their investments in qualified businesses. Consistent with previous changes the Commission has made to its designated entity rules, the rule modifications at issue were the result of trying to maintain this balance in the face of a rapidly evolving telecommunications industry, legislative changes, judicial decisions, and the demand of the public for greater access to wireless services. Consequently, the Commission believes that its analysis fully complied with the requirements of the RFA.

IV. Conclusion

39. For all of the reasons set forth in the *Order on Reconsideration* the Commission clarifies certain aspects of the *Second Report and Order* as well as its rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding.

V. Procedural Matters

A. Paperwork Reduction Act Analysis

40. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

B. Congressional Review Act

41. The Commission will include a copy of the *Order on Reconsideration of the Second Report and Order* in a report it will send to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Effective Date

42. The *Order on Reconsideration of the Second Report and Order* and the accompanying rule changes are effective upon publication in the **Federal Register**. The Commission finds there is good cause under section 553(d)(3) of the Administrative Procedure Act to make the changes it implements with this Order effective upon **Federal Register** publication, without the usual 30-day period, because these changes (with the possible exception of those concerning the unjust enrichment rules) constitute minor points of clarification of the rules adopted in the *Designated Entity Second Report and Order*, which were published in the **Federal Register** on May 4, 2006, 71 FR 26245. As to the clarifying changes in the Commission's unjust enrichment rules, these changes, at most, serve to ''grant[ ] or recognize[ ] an exemption or relieve[ ] a restriction'' and would therefore fall within the exception contained in section 553(d)(1).

D. Ordering Clause

43. *It is ordered* that pursuant to the authority granted in sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), the *Order on Reconsideration of the Second Report and Order*, is hereby ADOPTED and part 1, subpart Q of the Commission's rules are amended as set forth in the rule changes, effective June 14, 2006.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Auctions, Licensing, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ For the reasons discussed in the preamble, the FCC amends part 1 of the Code of Federal Regulations to read as follows:

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Revise paragraphs (a), (b) introductory text, (d)(2)(i) introductory text, (d)(2)(ii) and by adding paragraph (d)(2)(iii) to § 1.2111 to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license (see § 1.948). This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-aside.* As specified in this paragraph an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's rules) of, or for entry into a material relationship (see §§ 1.2110, 1.2114) (otherwise permitted under the Commission's rules) involving, a license acquired by the applicant pursuant to a set-aside for eligible designated entities under § 1.2110(c), or which proposes to take any other action relating to ownership or control that will result in loss of eligibility as a designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

* * * * *

(d) * * *

(2) * * *

(i) For licenses initially granted after April 25, 2006, the amount of payments made pursuant to paragraph (d)(1) of this section will be 100 percent of the value of the bidding credit prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met. If the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met, the amount of the payments will be reduced over time as follows:

* * * * *

(ii) For licenses initially granted before April 25, 2006, the amount of payments made pursuant to paragraph (d)(1) of this section will be reduced over time as follows:

(A) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or in the case of very small businesses transferring to small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible);

(B) A transfer in year 3 of the license term will result in a forfeiture of 75 percent of the value of the bidding credit;

(C) A transfer in year 4 of the license term will result in a forfeiture of 50 percent of the value of the bidding credit;

(D) A transfer in year 5 of the license term will result in a forfeiture of 25 percent of the value of the bidding credit; and

(E) For a transfer in year 6 or thereafter, there will be no payment.

(iii) These payments will have to be paid to the United States Treasury as a condition of approval of the assignment, transfer, ownership change, or reportable eligibility event (see § 1.2114).

* * * * *

3. Revise paragraph (a)(1) of § 1.2114 to read as follows:

§ 1.2114 Reporting of Eligibility Event.

(a) * * *

(1) Any spectrum lease (as defined in § 1.9003) or resale arrangement (including wholesale agreements) with one entity or on a cumulative basis that might cause a licensee to lose eligibility for installment payments, a set-aside license, or a bidding credit (or for a particular level of bidding credit) under

§ 1.2110 and applicable service-specific rules.

* * * * *

[FR Doc. E6–9275 Filed 6–13–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1073]

Radio Broadcasting Services; Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by The Curators of the University of Missouri directed at a staff letter action in this proceeding, which dismissed the Petition for Rulemaking requesting the reservation of vacant FM Channel 252C2 at Columbia, Missouri for noncommercial educational use. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, adopted May 24, 2006, and released May 26, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals 2, CY–A257, 445 12th Street, SW., Washington, DC. 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 20054, telephone 1–800–378–3160 or *http://www/BCPIWEB.com*. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–5227 Filed 6–13–06; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1076; MB Docket No. 05–121; RM–11197]

Radio Broadcasting Services; Knightdale and Wilson, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Capstar TX Limited Partnership, licensee of Station WRDU(FM), Channel 291C0, Wilson, North Carolina, requesting the reallotment of Channel 291C0 from Wilson to Knightdale, as its first local service, and modification of the Station WRDU(FM) license to reflect the change. Channel 291C0 can be reallotted to Knightdale, using reference coordinates 35–47–50 NL and 78–22–15 WL, which requires a site restriction of 10 kilometers (6.2 miles) east of the community to avoid short-spacings to the license sites of Station WFJA(FM), Channel 288A, Sanford, North Carolina and Station WMNA–FM, Channel 292A, Gretna, Virginia.

DATES: Effective July 10, 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. 05–121, adopted May 24, 2006, and released May 26, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information 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).

On April 10, 2003, Station WRDU(FM) was granted a license to specify operation on Channel 291C0 in lieu of Channel 291C at Wilson, North Carolina. *See* File No. BLH–20020607AAR.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Knightdale, Channel 291C0 and by removing Wilson, Channel 291C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–9073 Filed 6–13–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1054; MB Docket No. 05–5; RM–11139]

Radio Broadcasting Services; Morro Bay and Oceano, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Lazer Broadcasting Corporation, licensee of Station KLMM(FM), Morro Bay, California, this document reallots Channel 231A from Morro Bay to Oceano, California, as the community's first local transmission service, and modifies the license for Station KLMM(FM) to reflect the new community. Channel 231A is reallotted at Oceano at a site 12.4 kilometers (7.7 miles) south of the community at coordinates 34–59–20 NL and 120–37–56 WL.

DATES: Effective July 3, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket No. 05–5, adopted May 17, 2006, and released

May 19, 2006. The *Notice of Proposed Rule Making,* 70 FR 3667, January 26, 2005, was issued at the request of Lazer Broadcasting Corporation. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information 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 800–378–3160 or *http://www.BCPIWEB.com.*

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 231A at Morro Bay and adding Oceano, Channel 231A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8955 Filed 6–13–06; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 71, No. 114
Wednesday, June 14, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[ICE 2377–06; Docket No. ICEB–2006–0004]

RIN 1653–AA50

Safe-Harbor Procedures for Employers Who Receive a No-Match Letter

AGENCY: Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: The Bureau of Immigration and Customs Enforcement proposes to amend the regulations relating to the unlawful hiring or continued employment of unauthorized aliens. The amended regulation describes the legal obligations of an employer, under current immigration law, when the employer receives a no-match letter from the Social Security Administration or the Department of Homeland Security. It also describes ''safe-harbor'' procedures that the employer can follow in response to such a letter and thereby be certain that DHS will not find that the employer had constructive knowledge that the employee referred to in the letter was an alien not authorized to work in the United States. The proposed rule adds two more examples of situations that may lead to a finding that an employer had such constructive knowledge to the current regulation's definition of ''knowing.'' These additional examples involve an employer's failure to take reasonable steps in response to either of two events: (1) The employer receives written notice from the Social Security Administration (SSA) that the combination of name and social security account number submitted to SSA for an employee does not match agency records; or (2) the employer receives written notice from the Department of Homeland Security (DHS) that the immigration-status or employment-authorization documentation presented or referenced by the employee in completing Form I–9 was not assigned to the employee according to DHS records. (Form I–9 is retained by the employer and made available to DHS investigators on request, such as during an audit.) The proposed rule also states that whether DHS will actually find that an employer had constructive knowledge that an employee was an unauthorized alien in a situation described in any of the regulation's examples will depend on the totality of relevant circumstances. The ''safe-harbor'' procedures include attempting to resolve the no-match and, if it cannot be resolved within a certain period of time, verifying again the employee's identity and employment authorization through a specified process.

DATES: Written comments must be submitted on or before August 14, 2006.

ADDRESSES: You may submit comments, identified by DHS Docket No. ICEB–2006–0004, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: You may submit comments directly to ICE by email at *rfs.regs@dhs.gov*. Include docket number in the subject line of the message.
- Mail: Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, Contact Telephone Number (202) 272–8377. To ensure proper handling, please reference DHS Docket No. ICEB–2006–0004 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- Hand Delivery/Courier: Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Charles Wood, Regulatory Counsel, Office of the Principal Legal Advisor, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, 425 I Street, NW., Washington, DC 20536. Contact Telephone Number (202) 514–2895.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Immigration and Customs Enforcement (ICE) also invites comments that relate to the potential economic, environmental, or federalism effects of this proposed rule. Comments that will provide the most assistance to ICE in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. ICE would be particularly interested in comments on the time limits described in the rule. Comments that will provide the most assistance to ICE will include specific factual support, including examples of circumstances under which it would be difficult for the commenting employer to resolve the issues raised in a no-match letter within the stated time frame.

Instructions: All submissions received must include the agency name and DHS docket No. ICEB–2006–0004 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. See **ADDRESSES** above for information on how to submit comments.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected at the office of the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, Contact Telephone Number (202) 272–8377.

II. Background

Employers annually send the Social Security Administration (SSA) millions of earnings reports (W–2 Forms) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a letter that informs the employer of this fact. The letter is commonly referred to as a ''no-match letter.'' There are many causes for such a no-match, including clerical

error and name changes. But one of the causes is the submission of information for an alien who is not authorized to work in the United States and is using a false SSN or a SSN assigned to someone else. Such a letter may be one of the only indicators to an employer that one of its employees may be an unauthorized alien.

ICE sends a similar letter after it has inspected an employer's Employment Eligibility Verification forms (Forms I–9) and after unsuccessfully attempting to confirm, in agency records, that an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I–9 was assigned to that person. (After a Form I–9 is completed by an employer and employee, it is retained by the employer and made available to DHS investigators on request, such as during an audit.)

This proposed regulation describes an employer's current obligations under the immigration laws, and its options for avoiding liability, after receiving a no-match letter from either SSA or DHS. The proposed regulation specifies the steps to be taken by the employer that will be considered by DHS to be a reasonable response to receiving a no-match letter—a response that will eliminate the possibility that DHS, when seeking civil money penalties against an employer, will allege, based on the totality of relevant circumstances, that an employer had constructive knowledge that it was employing an alien not authorized to work in the United States, in violation of section 274A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(a)(2). This provision of the Act states:

> It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States *knowing* the alien is (or has become) an unauthorized alien with respect to such employment. [Emphasis added.]

Both regulation and case law support the view that an employer can be in violation of section 274A(a)(2), 8 U.S.C. 1324a(a)(2) by having constructive rather than actual knowledge that an employee is unauthorized to work. A definition of ''knowing'' first appeared in the regulations on June 25, 1990 at 8 CFR 274a.1(l)(1). See 55 FR 25928. That definition stated:

> The term ''knowing'' includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.

As noted in the preamble to the original regulation, that definition, which is essentially the same as the definition adopted in this rule, is consistent with the Ninth Circuit's holding in *Mester Mfg. Co.* v. *INS*, 879 F.2d 561, 567 (9th Cir. 1989) (an employer who received information that some employees were suspected of having presented a false document to show work authorization was held to have had constructive knowledge of their unauthorized status when he failed to make any inquiries or take appropriate corrective action). The court cited its opinion in *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.) (en banc), and explained its ruling in *Jewell* as follows: ''deliberate failure to investigate suspicious circumstances imputes knowledge.'' 879 F.2d at 567. See also *New El Rey Sausage Co.* v. *INS*, 925 F.2d 1153, 1158 (9th Cir. 1991).

The regulatory language quoted above also begins the current regulatory definition of ''knowing,'' which is still at 8 CFR 274a.1(l)(1). In the current definition, additional language follows this passage, describing situations that may involve constructive knowledge by the employer that an employee is an unauthorized alien. The Immigration and Naturalization Service added this language on August 23, 1991. See 56 FR 41767. The current definition contains an additional, concluding paragraph, which relates to foreign appearance or accent, and to the documents that may be requested by an employer as part of the verification system that must be used at the time of hiring, as required by INA section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). This paragraph will be described in greater detail below. The verification system referenced in this paragraph is described in INA section 274A(b), 8 U.S.C. 1324a(b).

III. Proposed rule

The proposed rule would amend the definition of ''knowing'' in 8 CFR 274a.1(l)(1), in the portion relating to ''constructive knowledge.'' First, it would add two more examples to the existing examples of information available to an employer indicating that an employee could be an alien who is not authorized to work in the United States. It also explicitly states the employer's obligations under current law, which is that if the employer fails to take reasonable steps after receiving such information, and if the employee is in fact an unauthorized alien, the employer may be found to have had constructive knowledge of that fact. The proposed rule would also state explicitly another implication of the employer's obligation under current law—whether an employer would be found to have constructive knowledge in particular cases of the kind described in each of the examples (the ones in the current regulation and in the proposed regulation) depends on the ''totality of relevant circumstances'' present in the particular case.

The additional examples are:

(1) Written notice from SSA that the combination of name and SSN submitted for an employee does not match SSA records; and

(2) written notice from DHS that the immigration status document, or employment authorization document, presented or referenced by the employee in completing Form I–9 was assigned to another person, or that there is no agency record that the document was assigned to anyone.

The proposed regulation also describes more specifically the steps that an employer might take after receiving a no-match letter, steps that DHS considers reasonable. By taking these steps in a timely fashion, an employer would avoid the risk that DHS may find, based on the totality of circumstance present in the particular case, that the employer had constructive knowledge that the employee was not authorized to work in the United States. The steps that a reasonable employer may take include one or more of the following:

(I) A reasonable employer would check its records promptly after receiving a no-match letter, to determine whether the discrepancy results from a typographical, transcribing, or similar clerical error in the employer's records or in its communication to the SSA or DHS. If there is such an error, the employer would correct its records, inform the relevant agencies (in accordance with the letter's instructions, if any; otherwise in any reasonable way), and verify that the name and number, as corrected, match agency records—in other words, verify with the relevant agency that the discrepancy has been resolved—and make a record of the manner, date, and time of the verification. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within 14 days of receipt of the no-match letter.

(II) If such actions do not resolve the discrepancy, the reasonable employer would promptly request the employee to confirm that the employer's records are correct. If they are not correct, the employer would take the actions needed to correct them, inform the relevant agencies (in accordance with the letter's instructions, if any; otherwise in any reasonable way), and verify the corrected records with the relevant

agency. If the records are correct according to the employee, the reasonable employer would ask the employee to pursue the matter personally with the relevant agency, such as by visiting a local SSA office, bringing original documents or certified copies required by SSA, which might include documents that prove age, identity, citizenship or alien status, and other relevant documents, such as proof of a name change, or by mailing these documents or certified copies to the SSA office, if permitted by SSA. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within 14 days of receipt of the no-match letter. The proposed regulation provides that a discrepancy will be considered resolved only if the employer verifies with SSA or DHS, as the case may be, that the employee's name matches in SSA's records a number assigned to that name, and the number is valid for work or is valid for work with DHS authorization (and, with respect to the latter, verifies the authorization with DHS) or that DHS records indicate that the immigration status document or employment authorization document was assigned to the employee. In the case of a number from SSA, the valid number may be the number that was the subject of the no-match letter or a different number, for example a new number resulting from the employee's contacting SSA to resolve the discrepancy. Employers may verify a SSN with SSA by telephoning toll-free 1–800–772–6270, weekdays from 7 a.m. to 7 p.m. EST. See *http://www.ssa.gov/employer/ssnvadditional.htm*. For info on SSA's online verification procedure, see *http://www.ssa.gov/employer/ssnv.htm*. Employers should make a record of the manner, date, and time of any such verification, as SSA may not provide any documentation.

(III) The proposed regulation also describes a verification procedure that the employer may follow if the discrepancy is not resolved within 60 days of receipt of the no-match letter. This procedure would verify (or fail to verify) the employee's identity and work authorization. If the described procedure is completed, and the employee is verified, then even if the employee is in fact an unauthorized alien, the employer will not be considered to have constructive knowledge of that fact. Please note that, as stated in the ''PUBLIC PARTICIPATION'' section above, ICE is interested in receiving public comments on the time frames in this proposed regulation. That would include the 60-day period, and also possible alternatives, such as a 30-day or 90-day time frame. In determining the time frame to be included in the final rule, ICE will consider all comments received. As further stated in ''PUBLIC PARTICIPATION,'' the comments that will provide the most assistance to ICE on this issue will include specific factual support, including examples of circumstances under which it would be difficult for the commenting employer to resolve the issues raised in a no-match letter within 60 days of receipt of the letter.

If the discrepancy referred to in the no-match letter is not resolved, and if the employee's identity and work authorization cannot be verified using a reasonable verification procedure, such as that described in the proposed rule (see below), then the employer must choose between taking action to terminate the employee or facing the risk that DHS may find that the employer had constructive knowledge that the employee was an unauthorized alien and therefore, by continuing to employ the alien, violated INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2).

The procedure to verify the employee's identity and work authorization described in the proposed rule would involve the employer and employee completing a new Form I–9, Employment Eligibility Verification Form, using the same procedures as if the employee were newly hired, as described in 8 CFR 274a.2, with certain restrictions. The proposed rule identifies these restrictions:

(*1*) Under the proposed rule, both Section 1 (''Employee Information and Verification'') and Section 2 (''Employer Review and Verification'') would have to be completed within 63 days of receipt of the no-match letter. Therefore, if an employer tried to resolve the discrepancy described in the no-match letter for the full 60 days provided for in the proposed rule, it would have an additional 3 days to complete a new I–9. Under current regulations, three days are provided for the completion of the form after a new hire. 8 CFR 274a.2(b)(1)(ii).

(*2*) No document containing the SSN or alien number that is the subject of the no-match letter, and no receipt for an application for a replacement of such a document, may be used to establish employment authorization or identity or both.

(*3*) No document without a photograph may be used to establish identity (or both identity and employment authorization). (This is consistent with the documentary requirements of the Basic Pilot Program. *See http://uscis.gov/graphics/services/SAVE.htm*.)

Employers should apply these procedures uniformly to all of their employees having unresolved no-match indicators. If they do not do so, they may violate applicable anti-discrimination laws. In this regard, the proposed regulation also amends the last paragraph of the current definition of ''knowing.'' The current rule provides, in relevant part, that—

> Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b)[1] of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

The proposed rule clarifies that this language applies to employers who receive no-match letters, but that employers who follow the safe harbor procedures set forth in this rule will not be found to have violated the provisions of 274B(a)(6) of the INA. This clarification is accomplished by adding the following language after ''individual'': '', except a document about which the employer has received a notice described in paragraph (l)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraph (l)(2)(i)(B) or (l)(2)(ii)(B) of this section.''. Alternative documents that show work authorization are specified in 8 CFR 274a.2(b)(1)(v). Examples are a U.S. passport (unexpired or expired), a U.S. birth certificate, or any of several documents issued to lawful permanent resident aliens or to nonimmigrants with work authorization.

There may be other procedures a particular employer could follow in response to a no-match letter, procedures that would be considered reasonable by DHS and inconsistent with a finding that the employer had constructive knowledge that the employee was an unauthorized alien. But such a finding would depend on the totality of relevant circumstances. An employer that followed a procedure other than the ''safe-harbor'' procedures described in the regulation would face the risk that DHS may not agree.

It is important that employers understand that the proposed regulation describes the meaning of constructive knowledge and specifies ''safe-harbor'' procedures that employers could follow to avoid the risk of being found to have constructive knowledge that an employee is not authorized to work in the United States. The regulation would not preclude DHS from finding that an employer had actual knowledge that an employee was an unauthorized alien. An employer with actual knowledge

[1] Please note, this citation is inaccurate and should read ''section 274A(b) of the Act.'' The proposed rule makes this correction.

that one of its employees is an unauthorized alien could not avoid liability by following the procedures described in the proposed regulation. The burden of proving actual knowledge would, however, be on the government. Finally, it is important that employers understand that the resolution of discrepancies in a no-match letter, or other information that an employee's Social Security Number presented to an employer matches the records for the employee held by the Social Security Administration, does not, in and of itself, demonstrate that the employee is authorized to work in the United States.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule would not affect small entities as that term is defined in 5 U.S.C. 601(6). This rule would describe when receipt by an employer of a no-match letter from the Social Security Administration or the Department of Homeland Security may result in a finding that the employer had constructive knowledge that it was employing an alien not authorized to work in the United States. The rule would also describe steps that DHS would consider a reasonable response by an employer to receipt of a no-match letter. The rule would not mandate any new burdens on the employer and would not impose any new or additional costs on the employer, but would merely add specific examples and a description of a ''safe harbor'' to an existing DHS regulation for purposes of enforcing the immigration laws and providing guidance to employers.

B. Unfunded Mandates Reform Act of 1995

This rule would not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or foreign markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is considered by the Department of Homeland Security (DHS) to be a ''significant regulatory action'' under Executive Order 12866. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this rule would describe what specific steps an employer that has received a no-match letter could take that would eliminate the possibility that DHS would find that the employer had constructive knowledge that it is employing an unauthorized alien, this rule may raise novel policy issues.

E. Executive Order 13132 (Federalism)

This rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This proposed rule would not impose any additional information collection burden or affect information currently collected by ICE.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.1(l) is revised to read as follows:

§ 274a.1 Definitions.

* * * * *

(l)(1) The term *knowing* includes having actual or constructive knowledge. Constructive knowledge is knowledge which may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition. Examples of situations where the employer may, depending on the totality of relevant circumstances, have constructive knowledge that an employee is an unauthorized alien include, but are not limited to, situations where the employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I–9;

(ii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf;

(iii) Fails to take reasonable steps after receiving information indicating that the employee may be an alien who is not employment authorized, such as—

(A) Labor Certification or an Application for Prospective Employer;

(B) Written notice from the Social Security Administration that the combination of name and social security account number submitted for the employee does not match Social Security Administration records; or

(C) Written notice from the Department of Homeland Security that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I–9 was assigned to another person, or that there is no agency record that the document was assigned to any person.

(2)(i) An employer who receives the notice from SSA described in paragraph (l)(1)(iii)(B) of this section will not be deemed to have constructive knowledge that the employee is an unauthorized alien if—

(A) The employer takes reasonable steps, within 14 days, to attempt to resolve the discrepancy; such steps may include:

(*1*) Checking the employer's records promptly after receiving the notice, to determine whether the discrepancy results from a typographical, transcribing, or similar clerical error, and if so, correcting the error(s), informing the Social Security Administration of the correct information (in accordance with the letter's instructions, if any; otherwise in any reasonable way), verifying with the Social Security Administration that the employee's name and social security account number, as corrected, match in Social Security Administration records, and making a record of the manner, date, and time of such verification; and

(*2*) If no such error is found, promptly requesting the employee to confirm that the name and social security account number in the employer's records are correct—and, if they are correct according to the employee, requesting the employee to resolve the discrepancy with the Social Security Administration, such as by visiting a Social Security Administration office, bringing original documents or certified copies required by SSA, which might include documents that prove age, identity, and citizenship or alien status, and other documents that may be relevant, such as those that prove a name change, or, if the employee states that the employer's records are in error, taking the actions to correct, inform, verify, and make a record described in paragraph (l)(2)(i)(A)(1) of this section; and

(B) In the event that, within 60 days of receiving the notice, the employer does not verify with the Social Security Administration that the employee's name matches in the Social Security Administration's records a number assigned to that name and that the number is valid for work or is valid for work with DHS authorization (and, with respect to the latter, verify the authorization with DHS), the employer takes reasonable steps, within an additional 3 days, to verify the employee's employment authorization and identity, such as by following the verification procedure specified in paragraph (l)(2)(iii) of this section.

(ii) An employer who receives the notice from DHS described in paragraph (l)(1)(iii)(C) of this section will not be deemed to have constructive knowledge that the employee is an unauthorized alien if—

(A) The employer takes reasonable steps, within 14 days of receiving the notice, to attempt to resolve the question raised by DHS about the immigration status document or the employment authorization document; and

(B) In the event that, within 60 days of receiving the notice, the employer does not verify with DHS that the document was assigned to the employee, the employer takes reasonable steps, within an additional 3 days, to verify the employee's employment authorization and identity, such as by following the verification procedure specified in paragraph (l)(2)(iii) of this section.

(iii) The verification procedure referenced in paragraphs (l)(2)(i)(B) and (l)(2)(ii)(B) of this section is as follows:

(A) The employer completes a new Form I–9 for the employee, using the same procedures as if the employee were newly hired, as described in § 274a.2(a) and (b) of this part, except that—

(*1*) Both Section 1—''Employee Information and Verification''—and Section 2—''Employer Review and Verification''—of the new Form I–9 should be completed within 63 days of receiving the notice referred to in paragraph (l)(1)(iii)(B) or (C) of this section;

(*2*) No document containing the social security account number or alien number that is the subject of a written notice referred to in paragraph (l)(1)(iii)(B) or (C) of this section, and no receipt for an application for a replacement of such document, may be used to establish employment authorization or identity or both; and

(*3*) No document without a photograph may be used to establish identity or both identity and employment authorization; and

(B) The employer retains the new Form I–9 with the prior Form(s) I–9 for the same period and in the same manner as if the employee were newly hired at the time the new Form I–9 is completed, as described in § 274a.2(b) of this part.

(3) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274A(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual, except a document about which the employer has received a notice described in paragraph (l)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraph (l)(2)(i)(B) or (l)(2)(ii)(B) of this section.

Dated: June 8, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–9303 Filed 6–13–06; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–19]

William Stein III, M.D.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by William Stein III, M.D. (petitioner). The petition has been docketed by the NRC and has been assigned Docket No. PRM–35–19. The petitioner is requesting that the NRC amend the regulations that govern medical use of byproduct material concerning training for parenteral administration of certain radioactive drugs used to treat cancer. The petitioner believes that these regulations do not adequately consider the training necessary for a class of physicians, namely medical oncologists and hemotologists, to qualify as an Authorized User (AU) physician to administer these drugs. The petitioner requests that the regulations be amended to clearly codify an 80-hour training and experience requirement as appropriate and sufficient for physicians desiring to attain AU status for these unsealed byproduct materials.

DATES: Submit comments by August 28, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (PRM–35–19) in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address comments about our rulemaking website to Carol Gallagher, (301) 415–5905; (e-mail *cag@nrc.gov*). Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publically available documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking dated March 20, 2006, submitted by William Stein III, M.D. (petitioner). The petitioner requests that the NRC amend 10 CFR part 35, ''Medical Use of Byproduct Material.'' Specifically, the petitioner requests that a requirement be added to 10 CFR part 35 or that 10 CFR 35.396 be revised to define and specify the number of classroom and laboratory training hours appropriate and sufficient for physicians who seek AU status limited to parenteral administrations of Sm-153-lexidronam (Quadramet), I-131-tositumomab (Bexxar), and Y-90-ibritumomab tiuxetan (Zevalin).

The petitioner believes the current regulations are burdensome and deficient. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–35–19. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner states that the training and experience requirements for physicians who seek AU status for parenteral administration of Quadramet, Bexxar, and Zevalin to treat certain cancers should reflect current requirements in 10 CFR 35.394, ''Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries),'' and not those currently in 10 CFR 35.396, ''Training for the parenteral administration of unsealed byproduct material requiring a written directive.'' The petitioner believes that the requirements in 10 CFR 35.396 are too restrictive and unnecessarily burdensome because they require 700 hours of training and board-certification in radiation oncology.

Quadramet is approved by the Food and Drug Administration (FDA) for pain relief in bone cancer patients and is administered intravenously. The petitioner states that the average dosage is 70 mCi and that the main route of elimination is urinary excretion which is usually complete within the first six hours of administration. Less than one percent of the administered dosage remains in the blood five hours after administration. Any remaining activity will be retained in the skeleton for the physical half-life of Sm-153 and results in minimal risk of radiation exposure to health care workers, family members, or other individuals who have contact with the patient. The petitioner believes that the patient can be released under the provisions specified in NUREG 1556, Vol. 9. The petitioner also states that patients can be released immediately if the administered activity of Sm-153 is less than 700 mCi and that no instructions are required if the administered activity is less than 140 mCi.

Bexxar has been approved by the FDA for intravenous treatment of non-Hodgkin's lymphoma. The petitioner indicates that the average dosage administered ranges from 33 to 161 mCi, averaging about 84 mCi, generally less than the dosage used for oral treatment of thyroid cancer with Na I-131. The petitioner states that a patient who receives an oral dosage of 30 mCi of I-131 for hyperthyroidism presents more of a radiation exposure hazard than a patient who is treated with an average dosage of Bexxar, for which the dose to other persons is usually less than the 500 mrem limit. The petitioner believes an oral dosage of I-131 remains in the body much longer than the typical Bexxar dosage. The petitioner also states that the I-131 present in Bexxar is firmly attached to the protein antibody and therefore, represents a much lower contamination hazard than from oral I-131 administration.

Zevalin has also been approved by the FDA for intravenous treatment of non-Hodgkin's lymphoma and is administered according to the patients body weight up to a maximum dosage of 32 mCi. The petitioner states that the Y-90 radionuclide presents a minimal risk to individuals who may come in contact with the patient and that the patient can be released after treatment under the provisions specified in NUREG 1556, Vol. 9.

The petitioner notes that all administrations of Quadramet, Bexxar, and Zevalin require written directives and believes that these drugs are

generally less hazardous than oral dosages of I-131. The petitioner therefore believes that the training and experience requirements should not exceed the 80 hours specified for an endocrinologist who treats thyroid disorders with oral dosages of I-131. (*See,* 10 CFR 35.392 and 35.394.) The petitioner has concluded that the training and experience requirement for parenteral administrations under 10 CFR 35.396 is unnecessarily burdensome because it requires board certification in radiation oncology.

The petitioner notes that 10 CFR 35.390 requires 200 hours of classroom training and laboratory experience for oral administration of I-131 and all parenteral administrations, §§ 35.392 and 35.394 require 80 hours of training for oral administration of I-131, and § 35.396 requires 80 hours for all parenteral administrations, but only applies to board-certified radiation oncologists. The petitioner also notes that in SECY–05–0020, ''Final Rule: Medical Use of Byproduct Material-Recognition of Specialty Boards'' (January 19, 2005), the NRC justified the 200-hour classroom training requirement in § 35.390 by stating that these physicians are authorized to prepare radioactive drugs and administer many types of radionuclides that require written directives and that pose a greater risk of exposure to radiation.

The petitioner states that § 35.396 was published in the **Federal Register** on March 30, 2005 (70 FR 16335), as part of the final rule that amended training and experience requirements for administration of radiopharmaceuticals. The petitioner believes that the NRC's rationale for the training and experience requirements in § 35.396 is not known and that an opportunity for public comment period was not provided for this provision before it appeared in the final rule. The petitioner also states that preparation of Quadramet, Bexxar, and Zevalin does not require use of generators and reagent kits. These radiopharmaceuticals are usually prepared at a commercial facility and then supplied to medical facilities as a unit dosage that the petitioner believes is much less than the dosage used for oral administration of I-131 for thyroid cancer treatment. The petitioner has concluded that because the parenteral administration of Quadramet, Bexxar, and Zevalin poses no greater potential risk than oral administration of I-131, use of these drugs should be considered a medical issue, not a radiation safety issue.

The petitioner believes that physicians who seek AU status for the limited authorization of parenteral administration of Quadramet, Bexxar, and Zevalin should only be subject to an 80-hour training and experience requirement, plus supervised work experience and written attestation, similar to the current requirement for oral I-131 administrations at 10 CFR 35.394. The petitioner states that, moreover, the NRC has not considered codification of new drugs that require written directives as they become available for medical use and that there is an unmet regulatory need to address the ability of physicians to qualify for medical use authorization for certain unsealed byproduct materials that are currently commercially available and for which written directives are required. The petitioner also states that under 10 CFR 35.390(b)(1)(ii)(G)(3) and (4) and § 35.396 (d)(2)(iv), only two generic types of parenteral administrations for which written directives have been considered: Parenteral administration of any beta emitter, or photon-emitting radionuclide with a photon energy of less than 150 keV; and parenteral administrations of any other radionuclide.

The petitioner states that the current training and experience requirements governing all parenteral administrations do not adequately consider the training necessary to attain AU status for Quadramet, Bexxar, and Zevalin. The petitioner recognizes that other more hazardous parenterally-administered drugs may become commercially available that require the increased training specified in §§ 35.390 and 35.396. However, the petitioner believes that radiopharmaceuticals should be subjected to training requirements according to potential radiation risk as is the case for oral administrations of I-131, rather than being lumped into a collective group, which the petitioner characterizes as being the NRC's current practice. The petitioner believes that the current requirements are burdensome and deficient in this regard and that, without regulatory relief, physicians would be discouraged from providing these FDA-approved and commercially available treatments resulting in an adverse impact on their ability to practice medicine. Under the current requirements, the petitioner believes that physicians would be required to become board-certified radiation oncologists under § 35.396 or complete 700 hours of training (including 200 hours of classroom and laboratory training) under § 35.390 to attain AU status to parenterally administer Quadramet, Bexxar, or Zevalin.

The petitioner also states that to be able to conclude that parenteral administration of Quadramet, Bexxar, and Zevalin requires more than 80 hours of training, the NRC would have to assert that each of these drugs presents more potential radiation hazard than oral administration of I-131. The petitioner believes this is more of a practice of medicine issue than a radiation safety issue. The petitioner also states that the NRC would be intruding into the practice of medicine if it did not conclude that medical oncologists/hematologists who have completed 80 hours of classroom and laboratory training, appropriate work experience, and obtained written attestation could be granted AU status for these drugs. The petitioner also believes that such a prohibition would prevent physicians from administering these radiopharmaceuticals and limit patients' access to treatments for life threatening diseases. The petitioner therefore requests that the NRC recognize as adequate and sufficient the 80-hour classroom and laboratory training requirement for physicians to attain AU status to administer Quadramet, Bexxar, and Zevalin as is required for oral Na I-131 administrations to treat thyroid cancer.

The petitioner states that the additional training required under §§ 35.390 and 35.396 is justified because these physicians prepare radioactive drugs and handle unsealed source material in quantities that can involve increased radiation exposure risks. However, the petitioner notes that physicians who administer parenteral doses of Quadramet, Bexxar, and Zevalin do not need to prepare radioactive drugs.

The Petitioner's Conclusion

The petitioner has concluded that the current 700-hour training and experience requirement (that includes a minimum of 200 hours of classroom and laboratory training) governing parenteral administrations of radiopharmaceuticals in 10 CFR part 35 with regard to administration of Quadramet, Bexxar, and Zevalin is unnecessarily burdensome. The petitioner therefore requests that the NRC recognize that 80 hours of classroom and laboratory training, supervised work experience, and a written attestation for physicians is adequate and sufficient to attain AU status for parenteral administrations of Quadramet, Bexxar, and Zevalin, all requiring written directives. The petitioner offers the following options for addressing this issue:

(1) A specific requirement should be added to 10 CFR part 35 essentially equivalent to the language in § 35.394 that governs oral administration of I-131

particularly with regard to the alternate pathway. An important language change should be made as specified in § 35.394(c)(2)(vi) to require administering dosages to patients or human research subjects that includes at least three cases involving each of these parenteral administrations.

(2) A separate requirement should be added for Quadramet, Bexxar, and Zevalin similar to the training and experience codification for administration of I-131 to allow the NRC to evaluate each substance individually so all radioactive drugs can be handled appropriately from a radiation safety perspective.

(3) 10 CFR 35.396 should be revised to specify an 80-hour classroom and laboratory training period, appropriate work experience, and a written attestation to apply to the alternate pathway for any physician, not limited to board-certified radiation oncologists. Specifically, the petitioner recommends removing the current § 35.396(c) and redesignating §§ 35.396(d)(1), (d)(2), and (d)(3) as §§ 35.396(c)(1), (c)(2), and (c)(3). However, the petitioner recognizes that the Commission may not agree with this change if other more hazardous parenterally-administered radiopharmaceuticals become available, necessitating the increased training currently specified in this requirement.

Dated at Rockville, Maryland, this 8th day of June, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–9246 Filed 6–13–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE248; Notice No. 23–06–03–SC]

Special Conditions: Thielert Aircraft Engines GmbH, Piper PA 28–161 Cadet, Warrior II and Warrior III Series Airplanes; Diesel Cycle Engine Using Turbine (Jet) Fuel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. These airplanes, as modified by Thielert Aircraft Engines GmbH, will have a novel or unusual design feature(s) associated with the installation of a diesel cycle engine utilizing turbine (jet) fuel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for installation of this new technology engine. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE248, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE248. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE248.'' The postcard will be date stamped and returned to the commenter.

Background

On February 11, 2002, Thielert Aircraft Engines GmbH, of Lichtenstein, Germany applied for a supplemental type certificate to install a diesel cycle engine utilizing turbine (jet) fuel in Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, currently approved under Type Certificate No. 2A13, is a four-place, low wing, fixed tricycle landing gear, conventional planform airplane. The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes to be modified have gross weights in the range of 2325 to 2440 pounds in the normal category. The affected series of airplanes have been equipped with various gasoline reciprocating engines of 160 horsepower.

Expecting industry to reintroduce diesel engine technology into the small airplane fleet, the FAA issued Policy Statement PS–ACE100–2002–004 on May 15, 2004, which identified areas of technological concern involving introduction of new technology diesel engines into small airplanes. For a more detailed summary of the FAA's development of diesel engine requirements, refer to this policy.

The general areas of concern involved the power characteristics of the diesel engines, the use of turbine fuel in an airplane class that has typically been powered by gasoline fueled engines, the vibration characteristics and failure modes of diesel engines. These concerns were identified after review of the historical record of diesel engine use in aircraft and a review of the 14 CFR part 23 regulations, which identified specific regulatory areas that needed to be evaluated for applicability to diesel engine installations. These concerns are not considered universally applicable to all types of possible diesel engines and diesel engine installations. However, after review of the Thielert installation, the Thielert engine type, and the requirements applied by the Lufthart Bundesamt, and applying the provisions of the diesel policy, the FAA proposed these fuel system and engine related special conditions. Other special conditions issued in a separate notice included special conditions for HIRF and application of § 23.1309 provisions to the Full Authority Digital Engine Control (FADEC).

Type Certification Basis

Under the provisions of § 21.101, Thielert Aircraft Engines GmbH must show that the Piper PA 28–161 Cadet, Warrior II and Warrior III series

airplanes, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A13 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. 2A13 are as follows:

The certification basis of models Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes is:

Civil Air Regulations (CAR) 3 effective May 15, 1956, including Amendments 3–1 and 3–2; paragraph 3.387(d) of Amendment 3–4; paragraphs 3.304 and 3.705 of Amendment 3–7, effective May 3, 1962; FAR 23.955 and 23.959 as amended by Amendment 23–7, effective September 14, 1969; FAR 23.1557(c)(1) as amended by Amendment 23–18, effective May 2, 1977; FAR 23.1327 and 23.1547 as amended by Amendment 23–20, effective September 1, 1977; and FAR 36, effective December 1, 1969, through Amendment 36–4.

Equivalent Safety Items for:

Airspeed Indicator—CAR 3.757

14 CFR part 23, at Amendment level 23–51, applicable to the areas of change:

14 CFR part 23, §§ 23.1; 23.3; 23.21; 23.23; 23.25; 23.29; 23.33; 23.45; 23.49; 23.51; 23.53; 23.63; 23.65; 23.69; 23.71; 23.73; 23.77; 23.141; 23.143; 23.145; 23.151; 23.153; 23.155; 23.171; 23.173; 23.175; 23.177; 23.201; 23.221; 23.231; 23.251; 23.301; 23.303; 23.305; 23.307; 23.321; 23.335; 23.337; 23.341; 23.343; 23.361; 23.361(b)(1); 23.361(c)(3); 23.363; 23.371; 23.572; 23.573; 23.574; 23.601; 23.603; 23.605; 23.607; 23.609; 23.611; 23.613; 23.619; 23.621; 23.623; 23.625; 23.627; CAR 3.159; 23.773; 23.777; 23.777(d); 23.779; 23.779(b); 23.781; 23.831; 23.863; 23.865; 23.867; 23.901; 23.901(d)(1); 23.903; 23.905; 23.907; 23.909; 23.925; 23.929; 23.939; 23.943; 23.951; 23.951(c); 23.954; 23.955; 23.959; 23.961; 23.963; 23.965; 23.967; 23.969; 23.971; 23.973; 23.973(f); 23.975; 23.977; 23.977(a)(2) in place of 23.977(a)(1); 23.991; 23.993; 23.994; 23.995; 23.997; 23.999; 23.1011; 23.1013; 23.1015; 23.1017; 23.1019; 23.1021; 23.1023; 23.1041; 23.1043; 23.1047; 23.1061; 23.1063; 23.1091; 23.1093; 23.1103; 23.1107; 23.1121; 23.1123; 23.1141; 23.1143; 23.1145; 23.1163; 23.1165; 23.1181; 23.1182; 23.1183; 23.1191; 23.1193; 23.1301; 23.1305; 23.1305(c)(8); 23.1309; 23.1311; 23.1321; 23.1322; 23.1327; 23.1331; 23.1337; 23.1351; 23.1353; 23.1357; 23.1359; 23.1361; 23.1365; 23.1367; 23.1381; 23.1431; 23.1461; 23.1501; 23.1519; 23.1521; 23.1521(d); 23.1527; 23.1529; 23.1541; 23.1543; 23.1549; 23.1551; 23.1555; 23.1557; 23.1557(c)(1)(ii), in place of §§ 23.1557(c)(i); 23.1567; 23.1581; 23.1583; 23.1585; 23.1587 and 23.1589.

Equivalent levels of safety for:

Cockpit controls—23.777(d)

Motion and effect of cockpit controls—23.779(b)

Liquid Cooling—Installation—23.1061

Ignition switches—23.1145

The type certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The type certification basis for the modified airplanes is as stated previously with the following modifications.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes must comply with the 14 CFR part 21, § 21.115 noise certification requirements of 14 CFR part 36.

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

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

Novel or Unusual Design Features

The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes will incorporate the following novel or unusual design features:

The Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes, as modified by Thielert Aircraft Engines GmbH, will incorporate an aircraft diesel engine utilizing turbine (jet) fuel.

Applicability

As discussed above, these special conditions are applicable to the Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes. Should Thielert Aircraft Engines GmbH apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. 2A13 to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

Discussion

The major concerns identified in developing FAA policy deal with installing the diesel engine and its vibration levels under normal operating conditions and with one cylinder inoperative, accommodating turbine fuels in airplane systems that have generally evolved based on gasoline requirements, the anticipated use of a FADEC to control the engine, and the appropriate limitations and indications for a diesel engine powered airplane. The general concerns associated with the Thielert modification are as follows:

- Installation and Vibration Requirements.
- Fuel and Fuel System Related Requirements.
- FADEC and Electrical System Requirements.
- Limitations and Indications.

Installation and Vibration Requirements: These special conditions include requirements similar to the requirements of § 23.901(d)(1) for turbine engines. In addition to the requirements of § 23.901 applied to reciprocating engines, the applicant will be required to construct and arrange each diesel engine installation to result in vibration characteristics that do not

exceed those established during the type certification of the engine; and do not exceed vibration characteristics that a previously certificated airframe structure has been approved for, unless such vibration characteristics are shown to have no effect on safety or continued airworthiness. The engine limit torque design requirements as specified in § 23.361 are also modified.

An additional requirement to consider vibration levels and/or effects of an inoperative cylinder was imposed. Also, a requirement to evaluate the engine design for the possibility of, or effect of, liberating high-energy engine fragments, if a catastrophic engine failure occurs, was added.

Fuel and Fuel System Related Requirements: Due to the use of turbine fuel, this airplane must comply with the requirements in § 23.951(c).

Section 23.961 will be complied with using the turbine fuel requirements. These requirements will substantiated by flight-testing as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

This special condition specifically requires testing to show compliance to § 23.961 and adds the possibility of testing non-aviation diesel fuels.

To ensure fuel system compatibility and reduce the possibility of misfueling, and discounting the first clause of § 23.973(f) referring to turbine engines, the applicant will comply with § 23.973(f).

Due to the use of turbine fuel, the applicant will comply with § 23.977(a)(2), and § 23.977(a)(1) will not apply. ''Turbine engines'' will be interpreted to mean ''aircraft diesel engine'' for this requirement. An additional requirement imposed is to consider the possibility of fuel freezing.

Due to the use of turbine fuel, the applicant will comply with § 23.1305(c)(8).

Due to the use of turbine fuel, the applicant must comply with § 23.1557(c)(1)(ii). Section 23.1557(c)(1)(ii) will not apply. ''Turbine engine'' is interpreted to mean ''aircraft diesel engine'' for this requirement.

FADEC and Electrical System Requirements: The electrical system must comply with the following:

- In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.
- The transition from the actual engine electrical network (FADEC network) to the remaining electrical system with the consumer's, avionics, communication, etcetera, should be made by a single point only. If several transitions (*e.g.*, for redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.
- There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.
- In case of loss of alternator power, the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot.
- FADEC, alternator, and battery must be interconnected in an appropriate way, so that in case of loss of battery power, the supply to the FADEC is guaranteed by the alternator.

Limitations and Indications: Section 23.1305, paragraphs (a) and (b)(2), will apply, except that propeller revolutions per minute (RPM) will be displayed. Sections 23.1305, paragraphs (b)(4) and (b)(5), are deleted.

Additional critical engine parameters for this installation that will be displayed include the following:

(1) Power setting, in percentage, and

(2) Fuel temperature.

Due to the use of turbine fuel, the requirements for § 23.1521(d), as applicable to fuel designation for turbine engines, will apply.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Piper PA 28–161 Cadet, Warrior II and Warrior III series airplanes modified by Thielert Aircraft Engines GmbH.

1. Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3)):

(a) For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

The effects of sudden engine stoppage may alternately be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable load levels are not imposed on the previously certificated structure.

(b) The limit engine torque to be considered under paragraph 14 CFR part 23, § 23.361(a) must be obtained by multiplying the mean torque by a factor of four for diesel cycle engines.

(1) If a factor of less than four is utilized, it must be shown that the limit torque imposed on the engine mount is consistent with the provisions of § 23.361(c), that is, it must be shown that the utilization of the factors listed in § 23.361(c)(3) will result in limit torques being imposed on the mount that are equivalent or less than those imposed by a conventional gasoline reciprocating engine.

2. Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines):

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

(a) Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for—

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

3. Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements):

Considering the fuel types used by diesel engines, the applicant must comply with the following:

Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80 °F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

4. Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements):

In place of compliance with § 23.961, the applicant must comply with the following:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel,

or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110 °F, -0°, +5° or the maximum outside air temperature for which approval is requested, whichever is more critical.

The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

5. Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements):

In place of compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

6. Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements):

In place of compliance with § 23.977(a)(1) the applicant will comply with § 23.977(a)(2), except ''diesel'' replaces ''turbine.''

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

7. Powerplant—Powerplant Controls and Accessories—Engine ignition systems (Compliance with § 23.1165 requirements):

Considering that the FADEC provides the same function as an ignition system for this diesel engine, in place of compliance to § 23.1165, the applicant will comply with the following:

The electrical system must comply with the following requirements:

(a) In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.

(b) The transition from the actual engine electrical network (FADEC network) to the remaining electrical system should be made at a single point only. If several transitions (for example, redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.

(c) There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.

(d) In case of loss of alternator power, the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot. This period must be at least 120 minutes.

(e) FADEC, alternator and battery must be interconnected in an appropriate way, so that in case of loss of battery power, the supply to the FADEC is guaranteed by the alternator.

8. Equipment—General—Powerplant Instruments (Compliance with § 23.1305 requirements):

In place of compliance with § 23.1305, the applicant will comply with the following:

The following are required powerplant instruments:

(a) A fuel quantity indicator for each fuel tank, installed in accordance with § 23.1337(b).

(b) An oil pressure indicator.

(c) An oil temperature indicator.

(d) A tachometer indicating propeller speed.

(e) A coolant temperature indicator.

(f) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

Alternately, no indicator is required if the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–5007D and provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance schedule for the engine installation.

(g) Power setting, in percentage.

(h) Fuel temperature.

(i) Fuel flow (engine fuel consumption).

9. Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521(d) requirements):

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

10. Markings And Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements):

Instead of compliance with § 23.1557(c)(1)(i), the applicant must comply with the following:

Fuel filler openings must be marked at or near the filler cover with—

For diesel engine-powered airplanes—

(a) The words ''Jet Fuel''; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar:

''Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only.''

The colors of this warning placard should be black and white.

11. Powerplant—Fuel system—Fuel-Freezing:

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

(1) The takeoff temperature limitation must be determined by testing or analysis to define the minimum cold-soaked temperature of the fuel that the airplane can operate on.

(2) The minimum operating temperature limitation must be determined by testing to define the minimum operating temperature acceptable after takeoff (with minimum takeoff temperature established in (1) above).

12. Powerplant Installation—Vibration levels:

Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels *imposed on the airframe* must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated: 14 CFR part 23, §§ 23.251; 23.613; 23.627; CAR 3.159; 23.572; 23.573; 23.574 and 23.901.

Vibration levels imposed on the airframe can be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

13. Powerplant Installation—One cylinder inoperative:

It must be shown by test or analysis, or by a combination of methods, that the

airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder becomes inoperative. Data must be provided to the airframe installer/modifier so either appropriate design considerations or operating procedures, or both, can be developed to prevent airframe and propeller damage.

14. Powerplant Installation—High Energy Engine Fragments:

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required:

(1) It must be shown that the engine construction type (massive or integral block with non-removable cylinders) is inherently resistant to liberating high energy fragments in the event of a catastrophic engine failure; or,

(2) It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off of the engine in the event of a catastrophic engine failure; or

(3) It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

(4) Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri on June 7, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9242 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE245; Notice No. 23–06–03–SC]

Special Conditions: Aero Propulsion, Inc., Piper Model PA28–236; Diesel Cycle Engine Using Turbine (Jet) Fuel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Piper Model PA28–236 airplanes with a Societe de Motorisation Aeronautiques (SMA) Model SR305–230 Aircraft Diesel Engine (ADE). This airplane will have a novel or unusual design feature(s) associated with the installation of a diesel cycle engine utilizing turbine (jet) fuel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for installation of this new technology engine. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE245, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE245. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE245.'' The postcard will be date stamped and returned to the commenter.

Background

On August 20, 2003, Aero Propulsion, Inc., applied for a supplemental type certificate for Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230. The airplane is powered by a SMA Model SR305–230 ADE, type certificated in the United States, type certificate number E00067EN.

Before the reintroduction of diesel engine technology into the small airplane fleet, the FAA issued Policy Statement PS–ACE100–2002–004 on May 15, 2004, which identified areas of technological concern involving introduction of new technology diesel engines into small airplanes. For a more detailed summary of the FAA's development of diesel engine requirements, refer to this policy.

The general areas of concern involved the power characteristics of the diesel engines, the use of turbine fuel in an airplane class that has typically been powered by gasoline fueled engines, the vibration characteristics and failure modes of diesel engines. These concerns were identified after review of the historical record of diesel engine use in aircraft and a review of the 14 CFR part 23 regulations, which identified specific regulatory areas that needed to be evaluated for applicability to diesel engine installations. These concerns are not considered universally applicable to all types of possible diesel engines and diesel engine installations. However, after review of the SMA installation, and applying the provisions of the diesel policy, the FAA proposes these fuel system and engine related special conditions. Other special conditions issued in a separate notice include special conditions for HIRF and application of § 23.1309 provisions to

the Full Authority Digital Engine Control (FADEC).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Aero Propulsion, Inc., must show that the Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 ADE meet the applicable provisions of 14 CFR part 23 and Civil Air Regulations (CAR) 3 thereto. In addition, the certification basis includes special conditions and equivalent levels of safety for the following:

Special Conditions:

- Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3)).
- Flutter (Compliance with § 23.629, paragraphs (e)(1) and (2)).
- Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines).
- Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements).
- Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements).
- Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements).
- Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements).
- Equipment—General—Powerplant Instruments (Compliance with § 23.1305 requirements).
- Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521(d) requirements).
- Markings and Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements).
- Powerplant—Fuel system—Fuel-Freezing.
- Powerplant Installation—Vibration levels.
- Powerplant Installation—One cylinder inoperative.
- Powerplant Installation—High Energy Engine Fragments.

Equivalent levels of safety for:

- Cockpit controls—23.777(d).
- Motion and effect of cockpit controls—23.779(b).
- Ignition switches—23.1145.

The type certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The type certification basis for the modified airplanes is as stated previously with the following modifications:

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 ADE must comply with 14 CFR 21.115 noise certification requirements of 14 CFR part 36.

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

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

Novel or Unusual Design Features

The Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 ADE will incorporate the following novel or unusual design features:

The Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 ADE will require the use of turbine (jet) fuel.

Applicability

As discussed above, these special conditions are applicable to the Piper Model PA28–236 airplanes with the installation of an SMA Model SR305–230 ADE.

Conclusion

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

Discussion

The major concerns identified in the development of FAA policy deal with several things. These include the installation of the diesel engine and its vibration levels under normal operating conditions and with one cylinder inoperative, the accommodation of turbine fuels in airplane systems that have generally evolved based on gasoline requirements, the anticipated use of a FADEC to control the engine, and the appropriate limitations and indications for a diesel engine powered airplane. The general concerns associated with the aircraft diesel engine installation are as follows:

Installation and Vibration Requirements.

Fuel and Fuel System Related Requirements.

FADEC and Electrical System Requirements.

Limitations and Indications.

Installation and Vibration Requirements: These special conditions include requirements similar to the requirements of § 23.901(d)(1) for turbine engines. In addition to the requirements of § 23.901 applied to reciprocating engines, the applicant will be required to construct and arrange each diesel engine installation according to certain restrictions. These include arranging the installation so vibration characteristics do not exceed those established during the type certification of the engine. The engine installation will also be required to not exceed vibration characteristics that a previously certificated airframe structure has been approved for, unless such vibration characteristics are shown to have no effect on safety or continued airworthiness. The engine limit torque design requirements as specified in § 23.361 are also modified.

An additional requirement to consider vibration levels and/or effects of an inoperative cylinder was imposed. Also, a requirement was added to evaluate the engine design for the possibility of, or effect of, liberating high-energy engine fragments, in the event of a catastrophic engine failure.

Fuel and Fuel System Related Requirements: Due to the use of turbine

fuel, this airplane must comply with the requirements in § 23.951(c).

Section 23.961 will be complied with using the turbine fuel requirements. These requirements will be substantiated by flight-tests as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

This special condition specifically requires testing to show compliance to § 23.961 and adds the possibility of testing non-aviation diesel fuels.

To ensure fuel system compatibility and reduce the possibility of misfueling, and discounting the first clause of § 23.973(f) referring to turbine engines, the applicant will comply with § 23.973(f).

Due to the use of turbine fuel, the applicant will comply with § 23.977(a)(2), and § 23.977(a)(1) will not apply. ''Turbine engines'' will be interpreted to mean ''aircraft diesel engine'' for this requirement. An additional requirement of the possibility of fuel freezing was imposed.

Due to the use of turbine fuel, the applicant will comply with § 23.1305(c)(8).

Due to the use of turbine fuel, the applicant must comply with § 23.1557(c)(1)(ii). Section 23.1557(c)(1)(i) will not apply. ''Turbine engine'' is interpreted to mean ''aircraft diesel engine'' for this requirement.

Limitations and Indications: Critical engine parameters for this installation that will be displayed include the following:

(1) Fuel temperature.

Due to the use of turbine fuel, the requirements for § 23.1521(d), as applicable to fuel designation for turbine engines, will apply.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Piper Model PA28–236 airplanes with an SMA SR305–230 ADE installed.

1. Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3)):

(a) For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

The effects of sudden engine stoppage may alternately be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable load levels are not imposed on the previously certificated structure.

(b) The limit engine torque obtained in CAR 3.195(a)(1) and (a)(2) or 14 CFR 23.361(a)(1) and (a)(2) must be obtained by multiplying the mean torque by a factor of four in lieu of the factor of two required by CAR 3.195(b) and 14 CFR 23.361(c)(3).

2. Flutter—(Compliance with the requirements of § 23.629 (e)(1) and (e)(2) requirements):

The flutter evaluation of the airplane done in accordance with 14 CFR 23.629 must include—

(a) Whirl mode degree of freedom which takes into account the stability of the plane of rotation of the propeller and significant elastic, inertial, and aerodynamic forces, and

(b) Propeller, engine, engine mount and airplane structure stiffness and damping variations appropriate to the particular configuration, and

(c) The flutter investigation will include showing the airplane is free from flutter with one cylinder inoperative.

3. Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines):

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

(a) Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for —

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

4. Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements):

Considering the fuel types used by diesel engines, the applicant must comply with the following:

Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80 °F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

5. Powerplant—Fuel System—Fuel flow (Compliance with § 23.955(c) requirements):

In lieu of 14 CFR 23.955(c), engine fuel system must provide at least 100 percent of the fuel flow required by the engine, or the fuel flow required to prevent engine damage, if that flow is greater than 100 percent. The fuel flow rate must be available to the engine under each intended operating condition and maneuver. The conditions may be simulated in a suitable mockup. This flow must be shown in the most adverse fuel feed condition with respect to altitudes, attitudes, and any other condition that is expected in operation.

6. Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements):

In place of compliance with § 23.961, the applicant must comply with the following:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110 °F, −0°, +5° or the maximum outside air temperature for which approval is requested, whichever is more critical.

The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

7. Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements):

In place of compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

8. Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements):

In place of compliance with § 23.977(a)(1) and (a)(2), the applicant will comply with the following:

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

9. Equipment—General—Powerplant Instruments (Compliance with § 23.1305):

In addition to compliance with § 23.1305, the applicant will comply with the following:

The following are required in addition to the powerplant instruments required in § 23.1305:

(a) A fuel temperature indictor.

(b) An outside air temperature (OAT) indicator.

(c) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

Alternately, no indicator is required if certain requirements are met. First, the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–5007D. Second, provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance schedule for the engine installation.

10. Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521 requirements):

All engine parameters that have limits specified by the engine manufacturer for takeoff or continuous operation must be investigated to ensure they remain within those limits throughout the expected flight and ground envelopes (*e.g.* maximum and minimum fuel temperatures, ambient temperatures, as applicable, etc.). This is in addition to the existing requirements specified by 14 CFR 23.1521 (b) and (c). If any of those limits can be exceeded, there must be continuous indication to the flight crew of the status of that parameter with appropriate limitation markings.

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

11. Markings and Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements):

Instead of compliance with § 23.1557(c)(1), the applicant must comply with the following:

Fuel filler openings must be marked at or near the filler cover with-For diesel engine-powered airplanes—

(a) The words ''Jet Fuel''; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar:

''Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only.''

The colors of this warning placard should be black and white.

12. Powerplant—Fuel system—Fuel-Freezing:

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

A minimum takeoff temperature limitation will be determined by testing to establish the minimum cold-soaked temperature at which the airplane can operate. The minimum operating temperature will be determined by testing to establish the minimum operating temperature acceptable after takeoff from the minimum takeoff temperature. If low temperature limits are not established by testing, then a minimum takeoff and operating fuel temperature limit of 5 °F above the gelling temperature of Jet A will be imposed along with a display in the cockpit of the fuel temperature. Fuel temperature sensors will be located in the coldest part of the tank if applicable.

13. Powerplant Installation—Vibration levels:

Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels *imposed on the airframe* must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated:

14 CFR part 23, §§ 23.251; 23.613; 23.627; 23.629 (or CAR 3.159, as applicable to various models); 23.572; 23.573; 23.574 and 23.901.

Vibration levels imposed on the airframe can be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

14. Powerplant Installation—One cylinder inoperative:

It must be shown by test or analysis, or by a combination of methods, that the airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder becomes inoperative.

No unsafe condition will exist in the case of an inoperative cylinder before the engine can be shut down. The resistance of the airframe structure, propeller, and engine mount to shaking moment and vibration damage must be investigated. It must be shown by test or analysis, or by a combination of methods, that shaking and vibration damage from the engine with an inoperative cylinder will not cause a catastrophic airframe, propeller, or engine mount failure.

15. Powerplant Installation—High Energy Engine Fragments:

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required:

(1) It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off of the engine in the event of a catastrophic engine failure; or

(2) It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

(3) Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri, on June 7, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9227 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24781; Airspace Docket No. 06–AWP–8]

Proposed Modification of Class E Airspace; Half Moon Bay, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area of Half Moon Bay, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Z Instrument Approach Procedures (IAP) to Runway (RWY) 30 at Half Moon Bay Airport, Half Moon Bay, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) Z IAP to RWY 30 at Half Moon Bay Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Half Moon Bay Airport, Half Moon Bay, CA.

DATES: Comments must be received on or before July 31, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–24891/ Airspace Docket No. 06–AWP–8 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6502.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–24781/Airspace Docket No. 06–AWP–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

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

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Half Moon Bay Airport, Half Moon Bay, CA. The establishment of a RNAV (GPS) ZIAP to RWY 30 at Half Moon Bay Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) ZIAP to RWY 30 at Half Moon Bay Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) ZIAP to RWY 30, Half Moon Bay Airport, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is no a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and

effective, September 15, 2005, is amended as follows:

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

* * * * *

AWP CA E5 Half Moon Bay, CA [Amended]

Half Moon Bay Airport
(Lat. 37°30′48″ N, long. 122°30′04″ W)

That airspace extending upward from 700 feet above the surface, bounded on the north by lat. 37°35′00″ N, on the east by long. 122° 14′00″ W, on the south by lat. 37°18′00″ N, on the west by long. 122°35′04″ W.

* * * * *

Issued in Los Angeles, California, on May 25, 2006.

John Clancy,

Area Director, Western Terminal Operations.

[FR Doc. 06–5366 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2005–23182]

RIN 2125–AF16

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The FHWA is extending the comment period for a notice of proposed rulemaking (NPRM) and request for comments, which was published on April 25, 2006, at 71 FR 23877. The original comment period is set to close on June 26, 2006. The extension is based on concern expressed by the National Committee on Uniform Traffic Control Devices (NCUTCD) that the June 26 closing date does not provide sufficient time for discussion of the issues in committee and a subsequent comprehensive response to the docket. The FHWA recognizes that others interested in commenting may have similar time constraints and agrees that the comment period should be extended. Therefore, the closing date for comments is changed to July 21, 2006, which will provide the NCUTCD and others interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

DATES: Comments must be received on or before July 21, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Brown, Office of Transportation Operations, (202) 366–2192; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the DOT Docket Facility by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the **Federal Register**'s home page at: *http://www.archives.gov* or the Government Printing Office's Web page at: *http://www.gpoaccess.gov/nara*.

Background

On April 25, 2006, the FHWA published in the **Federal Register** a notice of proposed rulemaking proposing changes to 23 CFR 655, the regulations for traffic control devices on Federal-aid and other streets and highways. The NPRM proposed, along with other administrative changes, to update these regulations by deleting references to obsolete reference materials; clarifying the phrase ''open to public travel'' by providing examples of roads and other facilities meant to be covered by the regulations; clarifying that ''substantial conformance'' with the National MUTCD, as required under the regulations, means that the State MUTCD or supplement shall conform as a minimum to the standard statements included in the National MUTCD unless a variation is approved by the FHWA Division Administrator or FHWA Associate Administrator of the Federal Lands Highway Program; and, allowing States to adopt the National MUTCD within two years from the effective date of the final rule making such changes, rather than the issuance date of the final rule.

The original comment period for the NPRM closes on June 26, 2006. The NCUTCD has expressed concern that this closing date does not provide sufficient time to review and discuss the proposed changes; and then, develop and submit complete responses to the docket. To allow time for this organization and others to submit comprehensive comments, the closing date is changed from June 26, 2006, to July 21, 2006.

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32 and 49 CFR 1.48(b).

Issued on: June 7, 2006.

Frederick G. Wright, Jr.,

Federal Highway Executive Director.

[FR Doc. E6–9243 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0367; FRL–8182–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania, VOC and NO_X RACT Determinations for Twelve Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the

Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for twelve major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 14, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0367 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: EPA–R03–OAR–2006–0367, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. 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–R03–OAR–2006–0367. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Pennsylvania's VOC and NO_X RACT Determinations for Twelve Individual Sources, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 06–5294 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1075; MB Docket No. 05–146; RM–11213]

Radio Broadcasting Services; Caliente and Moapa, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial.

SUMMARY: This document denies a pending petition for rule making filed by Aurora Media, LLC., to reallot Channel 233C from Caliente, Nevada to Moapa, Nevada, and to modify the construction permit authorization to reflect the change of community. The proposed change of community was denied because it would not result in a preferential arrangement of allotments.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–146, adopted May 24, 2006, and released May 26, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *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 the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because this proposed rule is denied, herein.).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–8954 Filed 6–13–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 060806B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline Take Reduction Plan

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is announcing a public meeting to provide information about the draft Atlantic Pelagic Longline Take Reduction Plan (PLTRP) and potential research and monitoring activities that may be initiated this summer in the Mid-Atlantic Bight involving the pelagic longline fishery.

DATES: The meeting will convene at 1 p.m. on Thursday, June 22, 2006, and will run until approximately 5 p.m.

ADDRESSES: The meeting will be held at Willie R. Etheridge Seafoods, 4561 Mill Landing Road, Wanchese, NC 27981.

FOR FURTHER INFORMATION CONTACT: Vicki Cornish, NMFS, Southeast Region, 727–824–5312, Vicki.Cornish@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: NMFS established the Atlantic Pelagic Longline Take Reduction Team in June 2005 to address incidental serious injuries and mortalities of short- and long-finned pilot whales (*Globicephala macrorhynchus* and *Globicephala melas*) in the Atlantic pelagic longline fishery, as required by the Marine Mammal Protection Act. The team met several times and developed a draft PLTRP for submittal to NMFS. The draft PLTRP contains proposed management measures to reduce serious injuries and mortalities of both pilot whales and Risso's dolphins (*Grampus griseus*) in the Mid-Atlantic Bight, as well as recommendations for research and data collection. The meeting will provide an opportunity for NMFS staff to meet with fishermen and discuss the draft PLTRP and potential research and monitoring efforts that may be initiated this summer, answer questions, and identify pelagic longline fishermen who may be willing to voluntarily participate in research activities.

Dated: June 8, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–9311 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 114
Wednesday, June 14, 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

June 8, 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) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: The Role of Local Communities in the Development of Agreement or Contract Plans through Stewardship Contracting.

OMB Control Number: 0596–New.

Summary of Collection: Section 323 of Public Law 108–7 (16 U.S.C. 2104 Note) requires the Forest Service (FS) and Bureau of Land Management (BLM) to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting. To meet that requirement FS plans to conduct an annual telephone survey to gather the necessary information for use by both the FS and BLM in developing their separate annual reports to Congress.

Need and Use of the Information: The survey will collect information on the role of local communities in the development of agreement or contract plans through stewardship contracting. The survey will provide information regarding the nature of the local community involved in developing agreement or contract plans, the nature of roles played by the entities involved in developing agreement or contract plans, the benefits to the community and agency by being involved in planning and development of contract plans, and the usefulness of stewardship contracting in helping meet the needs of local communities.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Number of Respondents: 350.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 175.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–9236 Filed 6–13–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 8, 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) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 2005 Section 32 Hurricane Disaster Programs.

OMB Control Number: 0560–0257.

Summary of Collection: The purpose of this request for information collection is to extend the requirements of the

2005 Section 32 Hurricane Disaster Programs. On January 26, 2006, the Secretary announced the 2005 Section 32 Hurricane Disaster Programs, consisting of the Feed Indemnity, the Hurricane Indemnity Program, the Livestock Indemnity Program, and the Tree Indemnity Program. These four programs targeted assistance to producers located in specific counties and States who lost crops, trees, livestock and or livestock feed as a result of damage caused by five specific hurricanes and tropical storms that occurred in calendar year 2005.

Need and Use of the Information: The Farm Service Agency will collect information using form FSA–573, ''2005 Section 32 Hurricane Disaster Programs Application''. This information will be used to make eligibility determinations on producers requests for payments to supplement indemnities or payments received under Federal Crop Insurance or the Noninsured Crop Disaster Assistance Program, in addition to request for payments to compensate for losses under one or more of the four programs covered under the 2005 Section 32 Hurricane Disaster Programs. Producers are asked to provide specific information regarding crops, trees, bushes, vines, livestock, and livestock feed that were lost as a result of one or more hurricanes or tropical storms in calendar year 2005.

Description of Respondents: Individuals or households; Business or other-for-profit; Not-for-profit institutions; Farms; State, local and tribal government.

Number of Respondents: 34,008.

Frequency of Responses: Recordkeeping; Reporting: Other (Request once).

Total Burden Hours: 51,012.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–9237 Filed 6–13–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 8, 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.

Food and Nutrition Service

Title: National Hunger Clearinghouse Database Form.

OMB Control Number: 0584–0474.

Summary of Collection: The Food and Nutrition Service (FNS) is interested in maintaining and further developing an information clearinghouse (named ''National Hunger Clearinghouse'') for groups that assist low-income individuals and communities concerning nutrition assistance programs or other assistance. Section 26 of the National School Lunch Act, which was added to the Act by section 123 Public Law 102–446 on November 2, 1994 (Appendix A), mandated that FNS enter into a 4 year contract with a non governmental organization to develop and maintain a national information clearinghouse of grassroots organizations working on hunger, food, nutrition, and other agricultural issues, including food recovery. This legislation was further amended on October 13, 1998 by section 112 of Public Law 105–336 to extend and increase funding for the clearinghouse (for fiscal years 2004 through 2009). The USDA National Hunger Clearinghouse uses state-of-the art computer and telecommunications technologies to connect the target audience, sharing information on effective program models, pending legislation and rulemakings, surplus and emergency food distribution networks, and USDA programs and policies. FNS will collect the information through fax, regular mail, e-mail, and the Internet.

Need and Use of the Information: FNS will collect information to provide a resource for groups that assist low-income individuals or communities regarding nutrition assistance program or other assistance. The information provided by the Clearinghouse database enables these groups to do a better job of assisting the target audience.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Farms.

Number of Respondents: 1,750.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 146.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–9238 Filed 6–13–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mountaintop Ranger District, San Bernardino National Forest, CA; Moonridge Animal Park Relocation

AGENCY: Forest Service, USDA.

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

SUMMARY: The San Bernardino National Forest is seeking public input and comment on a proposed animal park, which would be located near the Big Bear Discovery Center. The project is called the Moonridge Animal Park Relocation. The proposed action will be defined in the Special Use Permit application and draft Master Plan to be developed by Big Bear Valley Recreation and Parks District. A proposed Joint Venture Management Plan is a guiding document for the permit and the operating plan. The proposed concept design would occupy about 35 acres more or less of National Forest System (NFS) land. New facilities would include zoological and botanical gardens with habitat, education center, classrooms, animal exhibits, animal hospital and rehabilitation center, restrooms, retail and concession

buildings, support buildings, and paved parking for approximately 250 cars.

DATES: Comments concerning the scope of the analysis must be received by (30 days from the date of the NOI) July 14, 2006. The draft environmental impact statement is expected December, 2006 and the final environmental impact statement is expected April, 2007.

ADDRESSES: Send written comments to Paul W. Bennett, Recreation Officer, Mountaintop Ranger District, San Bernardino National Forest, P.O. Box 290, Fawnskin, CA 92333. For further information, mail correspondence to: Paul W. Bennett, Recreation Officer, Mountaintop Ranger District, San Bernardino National Forest, P.O. Box 290, Fawnskin, CA 92333. Or e-mail to *pwbennett@fs.fed.us.* Or telephone (909) 382–2819.

FOR FURTHER INFORMATION CONTACT: Richard M. Thornburgh, Environmental Coordinator, San Bernardino National Forest Service, 602 S. Tippecanoe, San Bernardino, CA 92408, (909) 382–2642.

SUPPLEMENTARY INFORMATION:

Purpose and Need for action

The purpose and need for action is for the San Bernardino National Forest to respond to a request from the Big Bear Valley Recreation and Parks District, a Special District of San Bernardino County, for a special use permit to occupy National Forest Service lands to operate a wild animal park and associated facilities. The Recreation and Parks District is proposing to relocate the animal park to the North Shore of Big Bear Lake adjacent to the Big Bear Discovery Center on the Mountaintop Ranger District of the San Bernardino National Forest. The project would occupy approximately 35 acres of National Forest lands, and not more than 40 acres. No new groundwater extraction would be allowed in connection with this project, in order to protect nearby meadow habitats. The type of use requested is consistent with the Forest Plan direction. The action is needed now because the Moonridge Animal Park's current lease expires in February 2009 and all facilities must be removed from that site by then. Alternate sites were evaluated and no other feasible site was found. Additionally, there is a joint-venture opportunity for environmental education objectives with the Forest Service's Big Bear Discovery Center.

Proposed Action

The Moonridge Animal Park is currently located on private land in the Moonridge area of Big Bear Valley. The Recreation and Park District's lease expires in February 2009. The District looked at several potential locations for the animal park, and determined that the area adjacent to the Big Bear Discovery Center best met their needs. The Recreation and Parks District has applied for a special use permit to build and maintain the new animal park and associated facilities on approximately 35 acres. If approved, the permit would be issued for a 20–30 year term.

New facilities would include zoological and botanical gardens, education center and classrooms, animal exhibits, animal hospital and rehabilitation center, restrooms, retail and concession buildings, support buildings, and paved parking for visitors and staff. Water and sewer would be connected to the community systems. The Big Bear Department of Water and Power water line would be extended from the Municipal Water District East Launch Ramp to the site. No additional water wells would be drilled in connection with this project. Night lighting would be provided for security purposes. A perimeter fence would be installed around the entire animal park.

Lead and Cooperating Agencies

The San Bernardino National Forest is the lead agency this analysis. San Bernardino County is a cooperating agency.

Responsible Official

The Forest Supervisor of the San Bernardino National Forest.

Nature of Decision To Be Made

To approve in whole, or in part, or a modified special use application for the relocation of the Moonridge Animal Park to national forest system lands.

Scoping Process

A scoping letter is being mailed to known potentially interested or affected parties. A legal notice announcing this project is being published in the San Bernardino Sun which is the Forest's newspaper of record. A scoping meeting will be held on June 17, 2006 from 1 p.m. to 4 p.m. at the Big Bear Discovery Center in Fawnskin, California.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

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

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30 day comment period for initial scoping and 45 days on the Draft Environmental Impact Statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

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

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

Dated: June 8, 2006.

Jeanne Wade Evans,

Forest Supervisor.

[FR Doc. 06–5397 Filed 6–13–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1454]

Designation of New Grantee For Foreign–Trade Zone 174, Tucson, Arizona, Resolution And Order

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign–Trade Zones Board Regulations (15 CFR Part 400), the Foreign–Trade Zones Board (the Board) adopts the following Order:

The Foreign–Trade Zones (FTZ) Board (the Board) has considered the application (filed 9/23/2005) submitted by the City of Tucson, grantee of FTZ 174, Tucson, Arizona, requesting reissuance of the grant of authority for said zone to the Tucson Regional Economic Opportunities, Inc., a non–profit corporation, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Tucson Regional Economic Opportunities, Inc. as the new grantee of Foreign–Trade Zone 174.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 31st day of May 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration.

Alternate Chairman Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–9307 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 21–2006]

Foreign–Trade Zone 99 – Wilmington, Delaware, Expansion of Manufacturing Authority—Subzone 99E, The Premcor Refining Group Inc., Delaware City, Delaware

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Delaware Economic Development Office, grantee of FTZ 99, requesting authority on behalf of The Premcor Refining Group Inc. (Premcor), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 99E at the Premcor oil refinery complex in Delaware City, Delaware. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 31, 2006.

Subzone 99E (152,000 BPD capacity 2,450 employees) was approved by the Board in 1996 for the manufacture of fuel products and certain petrochemical feedstocks and refinery by–products (Board Order 831, 61 FR 33490, 6/27/96, as amended by Board Order 1116, 65 FR 52696, 8/30/00).

The refinery complex (1,800 acres) consists of a main refinery/petrochemical plant, storage tanks and a marine terminal, located at 2000 Wrangle Hill Road, Delaware City in Newcastle County, Delaware, some 35 miles south of Philadelphia.

The expansion request involves an expansion of the crude throughput at the refinery due to increased efficiencies, improvements in equipment reliability and longer cycles between turnarounds to increase the overall crude distillation capacity of the refinery to 180,000 BPD. No additional feedstocks or products have been requested.

Zone procedures would exempt the increased production from customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the customs duty rates for certain petrochemical feedstocks (duty–free) by admitting foreign crude oil in non–privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 28, 2006.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, The Curtis Center, Suite 580 West, Independence Square West, Philadelphia, PA 19106.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: May 31, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–9288 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1455]

Approval For Expansion Of Subzone 99D, AstraZeneca Pharmaceuticals LP Plant, (Pharmaceutical Products), Newark and Wilmington, Delaware

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Delaware Economic Development Office, grantee of FTZ 99, has requested authority on behalf of AstraZeneca Pharmaceuticals LP (AstraZeneca), to expand the subzone boundaries and to expand the scope of manufacturing authority under zone procedures in terms of both products and capacity at Subzone 99D at the AstraZeneca pharmaceuticals manufacturing plant in Newark, Delaware (FTZ Docket 22–2005, filed 5/17/2005); and,

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 30079, 5/25/05);

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the expansion of the subzone boundaries and the scope of authority under zone procedures in terms of both products and capacity within Subzone 99D for the manufacture of pharmaceutical products at the AstraZeneca pharmaceutical manufacturing plants located in Newark and Wilmington, Delaware, as described

in the application and the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 31st day of May 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–9304 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

U.S. DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1444]

Grant of Authority, Establishment of a Foreign–Trade Zone, Lawrence County, Ohio

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for '' * * * the establishment * * * of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Lawrence County Port Authority (the Grantee), an Ohio public corporation, has made application to the Board (FTZ Docket 52–2005, filed 10/20/05), requesting the establishment of a foreign–trade zone at a site in Lawrence County, Ohio, adjacent to the Charleston Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 61786, 10/26/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign–trade zone, designated on the records of the Board as Foreign–Trade Zone No. 270, at the site described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of May 2006.

Foreign–Trade Zones Board.

Carlos M. Gutierrez,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–9305 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

U.S. DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1452]

Grant of Authority for Subzone Status, JBE, Inc. (Automotive Parts), Hartsville, South Carolina

Pursuant to its authority under the Foreign–Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for '' * * * the establishment * * * of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Columbia Metropolitan Airport, grantee of Foreign–Trade Zone 127, has made application to the Board for authority to establish a special–purpose subzone at the automotive parts distribution and assembly facility of JBE, Inc., located in Hartsville, South Carolina (FTZ Docket 55–2005, filed 11/2/05);

Whereas, notice inviting public comment was given in the **Federal Register** (70 FR 69937, 11/18/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the condition listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the distribution and assembly of automotive parts at the facility of JBE, Inc., located in Hartsville, South Carolina (Subzone 127B), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the following condition:

- JBE, Inc., shall notify the Board's Executive Secretary, as indicated in the application, prior to the start of any manufacturing or assembly activity involving foreign status inputs.

Signed at Washington, DC, this 26th day of May 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration.

Alternate Chairman Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–9306 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the 11th Administrative Review and New Shipper Reviews

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

EFFECTIVE DATE: June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2005, the Department published a notice of initiation of a review of fresh garlic from the People's Republic of China (''PRC''), covering the period November 1, 2004, through October 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 76024 (December 22, 2005). On December 28, 2005, the Department published a notice of initiation of new

shipper reviews of fresh garlic from the PRC covering the period November 1, 2004, through October 31, 2005. *See Fresh Garlic from the People's Republic of China: Initiation of New Shipper Reviews*, 70 FR 76765 (December 28, 2005).

On April 28, 2006, the Department aligned the statutory time lines of the 11th administrative review and all but one of the new shipper reviews.[1] Qingdao Xintianfeng Foods Company Ltd. (''QXF''), a respondent in one of the new shipper reviews, did not agree to waive the new shipper time limits.

Extension of Time Limit of Preliminary Results

The Department determines that completion of the preliminary results of these reviews within the statutory time period is not practicable. The 11th administrative review covers nine companies, and to conduct the sales and factor analyses for each requires the Department to gather and analyze a significant amount of information pertaining to each company's sales practices and manufacturing methods. The five new shipper reviews, including that of QXF, involve extraordinarily complicated methodological issues such as the use of intermediate input methodology, potential affiliation issues and the examination of importer information. The Department requires additional time to analyze these issues.

Therefore, given the number and complexity of issues in this case, 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 61 days until October 2, 2006. The final results continue to be due 120 days after the publication of the preliminary results. Regarding QXF, in accordance with section 351.214(h)(i)(1) of the Department's regulations and section 751(a)(2)(B)(iv) of the Act, we are extending the time period for issuing the preliminary results of review by 106 days until October 2, 2006. The final results continue to be due 90 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(c)(3)(A) and 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(h)(i)(1).

June 2, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–9223 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See* the Department's letter dated April 28, 2006.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820]

Stainless Steel Bar from France: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: June 14, 2006.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Terre Keaton, 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) 482–4136 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2006, the Department published in the **Federal Register** (71 FR 10642) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on stainless steel bar from France for the period March 1, 2005, through February 28, 2006. On March 31, 2006, Ugitech S.A. (Ugitech) requested an administrative review of its U.S. sales that were subject to the antidumping duty order on stainless steel bar from France for this period. On April 28, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel bar from France with respect to this company. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006).

Rescission of Review

On May 2, 2006, Ugitech timely withdrew its request for an administrative review of its sales during the above–referenced period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review if the party that requests a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, Ugitech has withdrawn its request for review within the 90–day period. Ugitech was the sole party to request the initiation of the review. Therefore, we are rescinding this review of the antidumping duty order on stainless steel bar from France.

This notice is published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 7, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–9222 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Notice of Amended Final Determination of Sales at Less Than Fair Value/Pursuant to Court Decision: Wooden Bedroom Furniture from the People's Republic of China

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

SUMMARY: On December 20, 2005, the United States Court of International Trade (''CIT'') issued an order sustaining the Department of Commerce's (''the Department'') Final Results of Redetermination pursuant to court remand filed by the Department on November 7, 2005. *Decca Hospitality Furnishings, LLC v. United States*, Ct. No. 05–00002, Slip Op. 05–161 (Ct. Int'l Trade, December 20, 2005) (''*Decca Order*''). The remand redetermination arose out of the Department's final determination and amended final determination and order. *See Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) (''*Final Determination*''), and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005) (''*Amended Final Determination*''). On May 16, 2006, the United States Court of Appeals for the Federal Circuit (''CAFC'') granted Petitioners' (*i.e.*, American Furniture Manufacturer's Committee for Legal Trade (''AFMC'')) motion for a voluntary dismissal of this case. Because the litigation in this matter is concluded, the Department is issuing an amended final determination in accordance with the CIT's decision.

EFFECTIVE DATE: June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW,

Washington DC 20230; telephone (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 2004, the Department of Commerce (''the Department'') published its notice of final determination of sales at less than fair value (''LTFV'') in the investigation of wooden bedroom furniture the People's Republic of China (''PRC''). *See Final Determination*. On January 4, 2005, the Department published its notice of amended final determination in the investigation of wooden bedroom furniture from the PRC. *See Amended Final Determination*.

Decca Hospitality Furnishings, LLC on behalf of its affiliate Decca Furniture, Ltd. (''Decca'') challenged certain aspects of the Department's *Final Determination* at the CIT.

In *Decca Hospitality Furnishings, LLC v. United States*, 391 F. Supp. 2d 1298 (CIT 2005), the CIT remanded the Department's determination to reject, as untimely, certain information submitted by Decca. Specifically, the CIT's order directed that:

> In its remand determination Commerce may reopen the record and may find a) that Decca received actual and timely notice of the Section A Questionnaire requirement, b) that the evidence Decca presented does not satisfy the evidentiary requirements for a separate rate, or c) that Decca is entitled to a separate rate.

Id. at 1317.

On October 25, 2005, the Department issued a draft results of redetermination pursuant to remand to the interested parties. On October 27, 2005, Decca submitted comments in response to the Department's draft results of redetermination. No other party filed comments in response to the Department's draft results of redetermination pursuant to remand. On November 7, 2005, the Department submitted its final results of redetermination pursuant to remand to the CIT. The final results of remand redetermination explained that option (a) of the CIT's remand instructions was not a viable option for the Department to pursue because it was not possible for the Department to determine if Decca had received actual and timely notice of the Section A Questionnaire requirement. Therefore, pursuant to options (b) and (c), the Department reopened the record and allowed Decca to resubmit its July 2, 2004, submission. During the conduct of its remand, the Department issued two supplemental questionnaires to Decca to address some deficiencies found in Decca's July 2, 2004, submission. Decca submitted timely and complete responses to these questionnaires. Based on our analysis of Decca's evidence, we determined that Decca qualifies for a separate rate in the investigation of wooden bedroom furniture from the PRC. *See Final Results of Redetermination Pursuant to Court Remand*, November 7, 2005.

On December 20, 2005, the CIT found that the Department duly complied with the Court's remand order and sustained the Department's remand redetermination. *See Decca Order*. Within the *Decca Order*, the Department granted Decca a separate rate which changed its antidumping duty rate from the PRC–wide rate of 198.08 percent to the Section A respondent rate of 6.65 percent.

On January 6, 2006, consistent with the decision in *Timken Co. v. United States*, 893 F. 2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not ''in harmony'' with the Department's final determination. *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Court Decision Not in Harmony*, 71 FR 1511 (January 10, 2006). AFMC appealed the CIT's decision to the CAFC. On May 16, 2006, the CAFC granted AFMC's motion to voluntarily dismiss its appeal.

Amended Final Determination

Because the only appeal in this case has been dismissed, there is now a final and conclusive court decision in the court proceeding and we are thus amending the *Amended Final Determination* to reflect the results of our remand determination.

The revised dumping margin is as follows:

Company	Weighted–Average Margin (Percent)
Decca	6.65

U.S. Customs and Border Protection will require a cash deposit rate of 6.65 percent for subject merchandise exported by Decca and entered or withdrawn from warehouse from consumption on or after the effective date of this notice. This cash deposit requirement shall remain in effect until publication of the final results of an administrative review of this order.

This notice is published in accordance with sections 735(d) and 777(i) of the Act.

Dated: June 7, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–9313 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111505A]

Pacific Fishery Management Council; Notice of Intent, Extension of Public Scoping Period for Intersector Groundfish Allocations

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

ACTION: Extension of public scoping period for an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS and the Pacific Fishery Management Council (Pacific Council) announce their intent to extend the public scoping period for an EIS in accordance with the National Environmental Policy Act (NEPA) of 1969 to analyze proposals to allocate groundfish among various sectors of the non-tribal Pacific Coast groundfish fishery.

DATES: Public scoping meetings will be announced in the **Federal Register** at a later date. Written comments will be accepted at the Pacific Council office through August 23, 2006. The public comment period will be reopened as part of the public comment section under the intersector allocation agenda item at the Pacific Council meeting in Foster City, CA, the week of Monday, September 11, 2006. Additional information on the time and location for this meeting will be provided when the meeting is announced in the **Federal Register**.

ADDRESSES: You may submit comments, on issues and alternatives, identified by 111505A by any of the following methods:

- E-mail: *##GFAllocationEIS.nwr@noaa.gov*. Include [111505A] and enter ''Scoping Comments'' in the subject line of the message.
- Fax: 503–820–2299.
- Mail: Dr. Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery

Management Council, phone: 503–820–2280, fax: 503–820–2299 and email: *john.devore@noaa.gov*; or Ms. Yvonne de Reynier NMFS, Northwest Region, phone: 206–526–6129, fax: 206–526–6426 and email: *yvonne.dereynier@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*.

Description of the Proposal

The proposed action with a description of the proposal was noticed in the **Federal Register** on November 21, 2005 (70 FR 70054).

Preliminary Identification of Environmental Issues

A principal objective of this scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the intersector allocation EIS. Concomitant with identification of those impacts to be analyzed in depth is identification and elimination from detailed study of issues that are not significant or which have been covered in prior environmental reviews. This narrowing is intended to allow greater focus on those impacts that are potentially most significant. Impacts on the following components of the biological and physical environment will be evaluated: (1) Essential fish habitat and ecosystems; (2) protected species listed under the Endangered Species Act and Marine Mammal Protection Act and their habitat; and (3) the fishery management unit, including target and non-target fish stocks. Socioeconomic impacts are also considered in terms of the effect changes will have on the following groups: (1) those who participate in harvesting the fishery resources and other living marine resources (for commercial, subsistence, or recreational purposes); (2) those who process and market fish and fish products; (3) those who are involved in allied support industries; (4) those who rely on living marine resources in the management area; (5) those who consume fish products; (6) those who benefit from non-consumptive use (e.g., wildlife viewing); (7) those who do not use the resource, but derive benefit from it by virtue of its existence, the option to use it, or the bequest of the resource to future generations; (8) those involved in managing and monitoring fisheries; and (9) fishing communities. Analysis of the effects of the alternatives on these groups will be presented in a manner that allows the identification of any disproportionate impacts on low income and minority segments of the identified groups, impacts on small entities, and cumulative impacts. Additional comment is sought on other types of impacts that should be considered or specific impacts to which particular attention should be paid within these categories.

Scoping and Public Involvement

Scoping is an early and open process for identifying the scope of notable issues related to proposed alternatives (including status quo and other alternatives identified during the scoping process). A principal objective of the scoping and public input process is to identify a reasonable set of alternatives that, with adequate analysis, sharply define critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. The public scoping process provides the public with the opportunity to comment on the range of alternatives. The scope of the alternatives to be analyzed should be broad enough for the Pacific Council and NMFS to make informed decisions on whether an alternative should be developed and, if so, how it should be designed, and to assess other changes to the FMP and regulations necessary for the implementation of the alternative.

Written comments will be accepted at the Pacific Council office through August 23, 2006 (see **ADDRESSES**). The public comment period will be reopened as part of the public comment section under the intersector allocation agenda item at the Pacific Council meeting in Foster City, CA, the week of September 11, 2006. Additional information on the time and location for this meeting will be provided when the meeting is announced in the **Federal Register**. This information will also be posted on the Council website (*www.pcouncil.org*).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–9309 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–2005–0012]

RIN 0651–AB98

Request for Comments on Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments; extension of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) has, in response to recent case law, revised its guidelines to be used by USPTO personnel in their review of patent applications to determine whether the claims in a patent application are directed to patent eligible subject matter. The USPTO published a notice requesting comments from the public regarding these interim examination guidelines. The USPTO is extending the period for comment on these interim examination guidelines.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before July 31, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB98.Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–0125, marked to the attention of Linda Therkorn. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or

phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Linda Therkorn, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571–272–8800, or Ray Chen, Office of the Solicitor, by telephone at 571–272–9035, by mail addressed to: Mail Stop Comments, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile transmission to 571–273–0125, marked to the attention of Linda Therkorn or Ray Chen.

SUPPLEMENTARY INFORMATION: The USPTO has published a notice setting forth interim guidelines to be used by USPTO personnel in their review of patent applications to determine whether the claims in a patent application are directed to patent eligible subject matter under 35 U.S.C. 101. *See Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, 1300 *Off. Gaz. Pat. Office* 142 (Nov. 22, 2005) (Patent Subject Matter Eligibility Interim Guidelines). The USPTO published a notice on December 20, 2005 requesting public comment on the interim guidelines. *See Request for Comments on Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, 70 FR 75451 (Dec. 20, 2005) (Request for Comments).

A case currently awaiting decision by the U.S. Supreme Court, *Laboratory Corp. of America Holdings* v. *Metabolite Laboratories, Inc.*, S.Ct. No. 04–607 (*LabCorp*), may impact the question of patent subject matter eligibility under 35 U.S.C. 101. The December 2005 Request for Comments indicated that the USPTO expected that a decision in *LabCorp* would be rendered sometime before the end of June 2006, and that USPTO would publish a notice further extending the period for public comment on the USPTO's Patent Subject Matter Eligibility Interim Guidelines if necessary to permit the comments to take into account the Court's decision in *LabCorp*. *See Request for Comments on Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, 70 FR at 75452. Therefore, the USPTO is further extending the period for public comment on the USPTO's Patent Subject Matter Eligibility Interim Guidelines until July 31, 2006 to permit the comments to take into account the Court's decision in *LabCorp* (still expected before the end of June 2006).

Dated: June 9, 2006.

John Doll,

Commissioner for Patents.

[FR Doc. E6–9300 Filed 6–13–06; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 16, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–5438 Filed 6–12–06; 2:26 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–35]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–35 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

06 JUN 2006

In reply refer to:
I-06/005969

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-35, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $458 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Japan**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$372 million
Other	$ 86 million
TOTAL	$458 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: nine SM-3 Block IA Standard missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers, spare and repair parts, publications, documentation, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.**

(iv) **Military Department: Navy (LVK)**

(v) **Prior Related Cases, if any: numerous FMS cases pertaining to the AEGIS Weapon Systems and Standard missiles**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 06 JUN 2006

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Japan - SM-3 Block IA Standard Missiles

The Government of Japan has requested a possible sale of nine SM-3 Block IA Standard missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers, spare and repair parts, publications, documentation, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $458 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

Japan's agreement to provide fuel/logistics to U.S. and allied ships supporting Operation Enduring Freedom and its deployment of an AEGIS destroyer to the Indian Ocean have focused new obligations on the Japan Self Defense Forces (JSDF). The Japan Maritime Self Defense Forces (JMSDF) has four AEGIS destroyers operating with SM-2 missiles at sea; the fifth and sixth AEGIS destroyers are under construction. Although comparable weapons are not currently deployed in Northeast Asia, the proposed sale of SM-3 missiles and BMD upgrades to the AEGIS Weapon System will not significantly alter the existing military balance in the region as the proposed sale enhances only defensive capabilities. The JMSDF is fully capable of integrating the modified AEGIS Weapon System and SM-3 Block IA into its operational forces and will receive data sufficient to maintain and support the systems.

The AEGIS Weapon System and Standard missiles will be used on JMSDF ships and will provide, in concert with JSDF PAC-3 Patriot missiles, the initial ballistic missile defense for mainland Japan. Japan already has the upgraded AEGIS Weapon System and SM-3 Block IA Standard missiles in its inventory and will have no difficulty absorbing the additional upgraded Weapon System and missiles.

The principle contractors will be:

Lockheed-Martin Maritime System and Sensors	**Moorestown, New Jersey**
Raytheon Company, Equipment Division	**Andover, Massachusetts**
United Defense	**Minneapolis, Minnesota**

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-3 Block IA Standard missile hardware includes the Propulsion Train (MK-72 Booster and Steering Control Section), the Third Stage Rocket Motor, Guidance Section, and Kinetic Warhead. The Propulsion Train and Third Stage Rocket Motor are classified Confidential. The Guidance Section and the Kinetic Warhead are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, dynamics information, and some flight analysis procedures.

2. Upgrades to the Vertical Launching System (VLS) Global Positioning Satellite (GPS) Integrator (VGI) include initialization data enhancements to the fiber optic distribution system connecting the VGI to the missile to support tactical requirements. VGI enhancements will be accomplished through commercial off-the-shelf products and are considered Unclassified. The software associated with these enhancements is classified Confidential.

3. Further enhancements include upgrades to the Launch Control Computer Program (LCCP), Launch Control Unit computer programs, and Launch Sequencer computer programs to control training, warfare, decryption and digital data processing. The LCCP is classified Confidential.

4. The Aegis Weapon System hardware upgrades include modifications to the current SPY-1D and Command and Decision configurations. Modifications to the SPY-1D configuration include upgraded signal processor cards and providing a Mission Planner Laptop and System Calibration Using Satellites Laptop. While the hardware is Unclassified, the computer programs that run on these systems are classified Secret. Command and Decision modifications include providing a TAC-3600 adjunct computer and circuit cardassemblies to provide an additional internal network path. While the hardware is Unclassified, the computer programs running on the system are classified Secret. Interoperability enhancements include additional capability of secure communications and cueing via upgrading to a Common Data Link Management System. This will upgrade the Common Shipboard Data Terminal Set and the

Command and Control Processor. Satellite TADIL-J functionality will additionally be incorporated. These interoperability systems are classified Secret.

5. The AEGIS documentation in general is Unclassified; however, some operational and maintenance manuals are classified Confidential and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to that necessary for operational organizational maintenance.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–5406 Filed 6–13–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

[USN–2006–0031]

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The U.S. Marine Corps is deleting one system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Effective June 14, 2006.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MFD00007

SYSTEM NAME:

Marine Corps Financial Records System (February 22, 1993, 58 FR 10630).

REASON:

The records are contained in systems of records that are maintained by the Defense Finance and Accounting Service (DFAS), and the Department of the Navy as follows:

T7332, Defense Debt Management System (June 27, 2002, 67 FR 43292).

T5500b, Garnishment Processing Files (August 24, 2005, 70 FR 49589).

MFD00003, Marine Corps Total Force System (MCTFS) (September 9, 1996, 61 FR 47503.

[FR Doc. 06–5400 Filed 6–13–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0140]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Inspector General (OIG) is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on July 14, 2006, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–11

SYSTEM NAME:

Budget Information Tracking System (BITS) (July 23, 2003, 68 FR 43501).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''All Office of the Inspector General (OIG) employees, contractors, or other personnel sponsored by the OIG who participate in OIG Travel, Permanent Change of Station, Awards, Overtime/

Compensation Time, Training, and programs with entitlement to reimbursable expenses.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Individual's name, Social Security Number, grade and or rank, street address, financial transaction document number, and the cost records of the personnel who have been approved for Temporary Duty; Permanent Change of Station (PCS); an employee cash award; reimbursement for miscellaneous expenses; and Overtime/Compensatory Time.''

PURPOSE(S):

Delete Item D and replace with: ''Tracking cash award costs or overtime costs.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with; ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number of the Individual.''

RECORD ACCESS PROCEDURE:

Delete entry and replace with: ''Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number of the individual.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Data maintained in the system is obtained directly from the individual on the following forms:

a. Request for Temporary Duty Travel Form, provided to the Travel Branch, Administration and Logistics Services Directorate, with information obtained from the individual traveler;

b. Request for Permanent Change of Station Form, provided by the Travel Branch, Administration and Logistics Services Directorate, with information obtained from the individual;

c. Request for Training Form, provided by the Training Officer within each segment of the Office of the Deputy Inspector General with information obtained from the individual; and

d. Request for reimbursement of miscellaneous expenses (DD Form 1164 or SF 1034) provided by respective budget point of contact within each office of the Deputy Inspector General with information obtained from the individual.

To the extent that a follow-up to resolve discrepancies is required, information is collected directly from the individual or the appropriate office within the Office of the Inspector General on Department of Defense (DD) Forms 1610 and 1614, Standard Form 182, and IG Form 1400.430–3.''

* * * * *

CIG–11

SYSTEM NAME:

Budget Information Tracking System (BITS) (July 23, 2003, 68 FR 43501).

SYSTEM LOCATION:

Office of the Chief of Staff, Office of the Comptroller, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Office of the Inspector General (OIG) employees, contractors, or other personnel sponsored by the OIG who participate in OIG Travel, Permanent Change of Station, Awards, Overtime/Compensation Time, Training, and programs with entitlement to reimbursable expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, grade and or rank, street address, financial transaction document number, and the cost records of the personnel who have been approved for Temporary Duty; Permanent Change of Station (PCS); an employee cash award; reimbursement for miscellaneous expenses; and Overtime/Compensatory Time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, the Inspector General Act of 1978, as amended; 5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, DoD Financial Management Regulation; DoD Directive 5106.1, Inspector General of the Department of Defense, Organization and Functions Guide; OIG DoD Instruction 7200.1, Budget and Fund Control; OIG DoD Instruction 7250.13, Official Representation Funds; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used in determining current year execution and future budgetary requirements for the OIG as follows:

a. Tracking temporary duty travel costs.

b. Tracking Permanent Change of Station costs.

c. Maintain spreadsheets maintained by Human Resources Training/purchase cardholders.

d. Tracking cash award costs or overtime costs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and or binders and on electronic storage media or a combination thereof.

RETRIEVABILITY:

Records are retrieved by the individual's financial transaction document number. A specified data element or a combination thereof contained in this system of records are used for accessing information.

SAFEGUARDS:

Access to the system is protected/restricted through the use of assigned user identification/passwords for entry into system modules.

RETENTION AND DISPOSAL:

Records are maintained for current fiscal year. Destroy 6 years and 3 months after the close of the fiscal year.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Office of the chief of State, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data maintained in the system is obtained directly from the individual on the following forms:

a. Request for Temporary Duty Travel Form, provided to the Travel Branch, Administration and Logistics Services Directorate, with information obtained from the individual traveler;

b. Request for Permanent Change of Station Form, provided by the Travel Branch, Administration and Logistics Services Directorate, with information obtained from the individual;

c. Request for Training Form, provided by the Training Officer within each segment of the Office of the Deputy Inspector General with information obtained from the individual; and

d. Request for reimbursement of miscellaneous expenses (DD Form 1164 or SF 1034) provided by respective budget point of contact within each office of the Deputy Inspector General with information obtained from the individual.

To the extent that a follow-up to resolve discrepancies is required, information is collected directly from the individual or the appropriate office within the Office of the Inspector General on Department of Defense (DD) Forms 1610 and 1614, Standard Form 182, and IG Form 1400.430–3.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5403 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Final Environmental Impact Statement for the Construction and the Operation of a Battle Area Complex and a Combined Arms Collective Training Facility Within U.S. Army Training Lands in Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Army announces the availability of a Final Environmental Impact Statement (FEIS) for the construction and operation of a Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF) within U.S. Army training lands in Alaska, and the execution of routine, joint military training at these locations. The purpose of the proposed project is to provide year-round, fully automated, comprehensive and realistic training and range facilities for U.S. Army, Alaska and other units. The FEIS analyzes the proposed action's impacts upon Alaska's natural and man-made environments. The FEIS was prepared in pursuant to the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Major Kirk Gohlke, Public Affairs Officer, telephone: (907) 384–1542 facsimile: (907) 384–2060; e-mail: *kirk.gohlke@richardson.army.mil.*

SUPPLEMENTARY INFORMATION: U.S. Army, Alaska (USARAK) proposes to construct and to operate two state-of-the-art, fully automated and instrumented combat training facilities on U.S. Army training lands in Alaska. This involves the construction and operation of a BAX (rural environment) and CACTF (urban environment). The BAX requires approximately 3,500 acres and the CACTF requires 1,100 acres of land suitable for the construction and operation of these ranges. In addition, surface danger zones are required for both the BAX and CACTF.

The purpose of the proposed action is to provide year-round, fully automated, comprehensive, and realistic training and range facilities, which, in combination, would support company (200 Soldiers) through battalion (800 Soldiers) combat team training events. The construction and operation of a BAX and CACTF would support required higher levels of realistic combat training in both urban and rural environments. Automated facilities would be used to provide timely feedback that is critical to effective training.

The BAX and CACTF would fully train Soldiers for war by maintaining unit readiness and availability in recognition of the threats facing our nation and the world today. The BAX would support company combat team live-fire operations on a fully automated rural maneuver range and would provide for joint combined arms team training with other Department of Defense organizations. The CACTF would support battalion combat team training and joint operation in an urban environment.

The changes in the FEIS are the result of public and agency comments following the release of the Supplemental Draft EIS in March 2006. The FEIS provides additional analysis on such issues as: project site selection; soil resources; wildlife and fisheries; cultural resources; surface water (particularly local flooding events); fire management; noise; human health and safety; airspace use; and mitigation. These issues have been analyzed based on the following proposed alternative courses of action: (1) No Action (maintain existing range infrastructure without constructing a BAX and a CACTF); (2) Construction and operation of a BAX and a CACTF within the Eddy Drop Zone; (3) Construction and operation of a BAX and a CACTF within the Donnelly Drop Zone; (4) Construction and operation of a BAX and a CACTF within the North Texas Range; and (5) Construction and operation of a BAX within the North Texas Range and CACTF within the Eddy Drop Zone (new alternative). These three locations are within Donnelly Training Area, East, which is adjacent to Fort Greely, AK. The preferred alternative is to construct and operate a BAX and CACTF at Eddy Drop Zone.

Publication of the FEIS is expected to occur in or around June 2006. A 30-day waiting period begins on the date the U.S. Environmental Protection Agency publishes notice of receipt of the FEIS in the **Federal Register**. Thereafter, the Army will complete the EIS process by issuing a Record of Decision. Copies of the FEIS are available at the following locations: Noel Wien Public Library, 1215 Cowles Street, Fairbanks, AK; Delta Junction Public Library, Deborah Street, Delta Junction, AK; Donnelly Training Area National Resources Office, Building T100, Room 201, Fort Greely, AK; and Fort Wainwright Environmental Resources Department, Building 3023, Fort Wainwright, AK. A copy of the FEIS may be viewed at the following Web site: *http://www.usarak.army.mil/conservation*, or

requested by contacting Major Kirk Gohlke (listed above).

John M. Brown III,

Lieutenant General, USA, Commanding General, U.S. Army, Pacific.

[FR Doc. 06–5386 Filed 6–13–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

[DOD–2006–OS–0139]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on July 14, 2006, unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 05–0004

SYSTEM NAME:

AVUE Technologies Position Management, Recruitment, Retention and Staffing Module (PMRRS).

SYSTEM LOCATIONS:

AVUE Digital Services, 1801 K Street, NW., Suite 1150, Washington, DC 20006.

Defense Intelligence Agency, Bolling Air Force Base, Building 6000, Washington, DC 20340–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for employment with DIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number, date of birth, telephone number, e-mail address, race, gender, national origin, ethnicity, handicap information and other information related to employment, education, background investigations and other information relevant to the jobs for which the individual applies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, (50 U.S.C. 401 *et seq.*); 10 U.S.C. 1601, Civilian intelligence personnel: general authority to establish excepted services, appoint personnel, and fix rates of pay; 5 U.S.C. 301, Departmental Regulation; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to automate position classification, management, recruitment, staffing, and reporting associated with Defense Intelligence Agency employment process by collecting information relevant to the jobs for which the individual applies to determine the individual's eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense at a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth as the beginning of the Defense Intelligence Agency's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, and job announcement number.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Records will be maintained on a secure, password protected server. Intrusion detection software operates continuously to identify and stop attempts to access the information without proper credentials.

RETENTION AND DISPOSAL:

Information on applicants who are not selected for employment within twelve (12) months after applying to the Agency is deleted. Information pertaining to individuals who are hired will become part of the DIA Official Personnel Records (File Series 420–PA), retention is permanent.

SYSTEM MANAGER(S) AND ADDRESS:

AVUE Digital Services, 1801 K Street, NW., Suite 1150, Washington, DC 20006.

Defense Intelligence Agency, Bolling Air Force Base, Building 6000, Washington, DC 20340–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquires to the Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Defense Intelligence Agency's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the System of Records will be obtained by AVUE Digital Services. The component will obtain the information from individuals who are using the AVUE application system to apply for employment with the Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5402 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

[DOD–2006–OS–0141]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on July 14, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 06–0003

SYSTEM NAME:

Deployment Management Records.

SYSTEM LOCATION:

Defense Intelligence Agency (DIA) Deployment Center, 3300 75th Ave., Landover, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, civilian employees, employees of other government agencies and contractors supporting ongoing contingency operations for DIA missions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include but are not limited to copies of security information, copies of medical files, documentation of fulfilled training requirements, organizational and administrative information. Records include a profile containing: Full name of the individual; social security number; home, work, cell and pager numbers; home address; personal and work email address; emergency contact name, telephone number, home address, and email address; contract number and contractor organization name, along with employer's contact name, address and telephone number; travel itineraries; deployment; copies of passport and/or visa and common access or identification card; travel authorization information; trip dates, deployment processing information including training completed certifications, medical and dental screenings, blood type; and other official deployment-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3102; DIA Instruction 1400.003, Civilian Workforce Deployments; and E.O. 9397 (SSN).

PURPOSE(S):

To plan and manage support personnel who deploy in support of ongoing contingency operations for DIA missions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Name, Social Security Number (SSN) and Deployment Identification Number (DIN).

SAFEGUARDS:

Paper records are maintained in a building protected by security guards and are stored in locked cabinets inside a protected storage area within a locked room within a SCIF and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records will be maintained on a secure, password protected server.

RETENTION AND DISPOSAL:

Disposition and retention pending National Archives and Records Administration (NARA) approval. Records will be treated as permanent until disposition and retention policies are approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Intelligence Agency (DIA) Deployment Center, 3300 75th Ave., Landover, MD.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Privacy Office (DAN–1C), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to DIA Privacy Office (DAN–1C), Defense

Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Defense Intelligence Agency's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency employees, other government agencies and employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5404 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

[DOD–2006–OS–0142]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 14, 2006, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

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

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSDA Federal Register Liaison Officer, Department of Defense.

S400.30

SYSTEM NAME:

Mass Transportation Fringe Benefit Program—Outside the National Capital Region.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, ATTN: DES–B, Fort Belvoir, VA 22060–6221 and the Defense Logistics Agency Field Activities located outside the National Capital Region. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

U.S. Department of Transportation, TRANServe, 400 7th Street, SW., Room P2–0327, Washington, DC 20590–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military employees; non-appropriated funded employees, interns/students employed and paid directly by DoD (*i.e.,* interns/students hired through contractual agreements are not eligible); eligible interns/students hired for the summer months; members of the Reserve Components who are performing active duty for more than 30 days located outside the National Capital Region who apply for and/or obtain a transit subsidy under the Mass Transportation Fringe Benefit Program (MTFBP); registered and non-registered vanpool owners/operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include applicant's full name, last four digits of their Social Security Number, home address, office symbol and duty location, office telephone number, mode of transportation being used, cost(s) of commuting, reimbursement claim for expenditures, period covered, and amount of reimbursement, and records of vouchers, receipts or payments distributed, dates of participation and termination in program, and vanpool owner/operator certification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7905, Programs to Encourage Commuting by Means Other Than Single-Occupancy Motor Vehicles; E.O. 12191, Federal Facility Ride Sharing Program; E.O. 13150, Federal Workforce Transportation; and E.O. 9397 (SSN).

PURPOSE(S):

Information is collected and maintained for the purpose of managing the DLA Mass Transportation Fringe Benefit Program for participants Outside the National Capitol Region (ONCR), including receipt and processing of employee applications and distribution fo the fare media to employees; to reimburse participants; to track the use of funds used to support the program; to evaluate employee participation in the program; and to prevent misuse of the funds involved.

Participant records may be used by the DLA Field Activity parking authorities for the purpose of identifying those individuals who receive a fare subsidy and also make use of a DLA Field Activity parking sticker.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Department of Transportation for the purposes of administering the Public Transportation Benefit Program and/or verifying the eligibility of individuals to receive a fare subsidy pursuant to transportation benefit program operated by the DoD or other Federal agencies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of systems of records notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper forms and on electronic storage media.

RETRIEVABILITY:

Information is retrieved by individual's name and last 4 digits of their Social Security Number.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards,

and is accessible only to authorized personnel. Access to record is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know. All individuals granted access to this system of records have received Privacy Act training.

RETENTION AND DISPOSAL:

Documents relating to the disbursement of transportation subsidies to employees, including applications of employees no longer in the program, superseded applications, certification logs, vouchers, spreadsheets, and other forms used to document the disbursement of subsidies are destroyed when 3 years old.

Documents relating to cash reimbursements for transportation expenses associated with transit passes or vanpools, specifically Standard Form (SF) 1164, entitled ''Claim for Reimbursement for Expenditures on Official Business,'' are destroyed 6 years and 3 months after period covered by account.

SYSTEM MANAGER(S) AND ADDRESS:

ONCR Program Manager, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, ATTN: DES–B, Fort Belvoir, VA 22060–6221, and the ONCR Mass Transportation Fringe Benefit Program Points of Contact at the Defense Logistics Agency Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notice.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the DLA Field Activity providing the subsidy. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain the full name of the individual, current address, telephone number, and the DLA Field Activity which provided the subsidy.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquires to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the DLA Field Activity providing the subsidy. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain the full name of the individual, current address, telephone number, and the DLA Field Activity which provided the subsidy.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Applicant requesting transit subsidies; vanpool owner/operator; other federal agencies providing information regarding fare subsidies; and from periodic certifications and reports regarding fare subsidies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5405 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplement to the Environmental Impact Statement to Evaluate Construction of Authorized Improvements to the Federal Pascagoula Harbor Navigation Project in Jackson County, MS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Supplement to the Environmental Impact Statement (DSEIS) to address the potential impacts associated with construction of authorized improvements to the Federal Pascagoula Harbor Navigation Project in Jackson County, MS. The DSEIS will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA) and evaluating the following two alternative plans: ''No Action'' and widening and deepening to the authorized project dimensions. Construction of some of the authorized improvements was completed in 1999. Remaining authorized elements which will be evaluated include widening the Gulf Entrance channel from 450 feet to 550 feet wide and deepening the Upper Pascagoula channel from 38 feet to 42 feet deep.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DSEIS should be addressed to Ms. Jenny Jacobson, Coastal Environmental Team, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628 by telephone (251) 690–2724 or e-mail her at *jennifer.l.jacobson @sam.usace.army.mil.*

1. The March 1985 Pascagoula Harbor, MS Feasibility Report investigated increased widths and depths in the Pascagoula and Bayou Casotte navigation channels. Of the plans initially formulated, five were selected for detailed study along with the ''No Action'' alternative. All plans considered for detailed study included deepening all the channels in Mississippi Sound to 42 feet and the Entrance channel to 44 feet; widening of the Entrance channel to 550 feet; widening of the Bayou Casotte channel to 350 feet; and providing a 1,400-foot turning diameter turning basin just inside the month of Bayou Casotte. The 1985 Feasibility Report recommended deepening and widening the Gulf Entrance channel to 44 feet by 550 feet from the 44-foot depth contour in the Gulf of Mexico to the bend at the southern end of Horn Island Pass, deepening and widening Horn Island Pass to 44 feet by 600 feet between the bends at the southern and northern ends of that pass, for a distance of about 4 and ½ miles; reconfiguring the impoundment basin in Horn Island Pass to provide a section within the channel limits 1,500 feet long with a total depth of 56 feet to facilitate maintenance by hopper dredge, and allowing for future realignment of the Horn Island Pass reach as natural conditions warrant. In addition, deepening the Lower Pascagoula channel to 42 feet from the bend at the north end of Horn Island Pass, through Mississippi Sound and into the Pascagoula River, and terminating about 500 feet south of the grain elevator for a total distance of about 10 miles; widening the bend at the junction with the Bayou Casotte channel from the present 150 feet to 250 feet to provide a total width at the bend of 600 feet and widening the bend at the mouth of Pascagoula River by 280 feet to provide a total width at the bend of 630 feet. Finally, widening and

deepening the Bayou Casotte channel to 42 feet by 350 feet from the junction with of the main channel to the mouth of Bayou Casotte, a distance of about 3 and ½ miles; with additional widening at the mouth to provide a turning basin with a total turning diameter of 1,150 feet, including the channel width; relieving the northern portion of the area between the junction wtih the main ship channel from the present 500 feet to 1,000 feet, and widening the bend at the mouth of Bayou Casotte from the present 50 feet to 100 feet to provide a total width at the bend of 450 feet. A Final EIS for the Designation of an Ocean Dredged Material Disposal Site (ODMDS) located offshore Pascagoula, MS was prepared in July 1991. Construction of all phases of the improvements, except for the Entrance channel being widened to 550 feet and the Pascagoula Upper channel being deepened to 42 feet, were completed in 1999.

2. Alternative scenarios to be considered include the ''No action'' alternative and deepening and widening the federally authorized project to 42 feet deep in the Upper Pascagoula channel and 550 feet wide in the Gulf Entrance channel, respectively. In addition, an array of disposal options are also being evaluated for the new work as well as for the maintenance material including littoral zone disposal, beneficial use, disposal in the existing Pascagoula ODMDS, and disposal in existing open-water disposal sites.

3. Scoping: a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. Public meetings will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from construction of authorized improvements. Specifically, the following major issues will be analyzed in depth in the DSEIS: Hydrologic and hydraulic regimes, threatened and endangered species, essential fish habitat and other marine habitat, air quality, cultural resources, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups) (Executive Order 12898), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DSEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DSEIS: U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Mississippi Department of Environmental Quality, Mississippi Department of Marine Resources, Jackson County Port Authority, City of Pascagoula, and State Historic Preservation Officer.

4. It is anticipated that the first scoping meeting will be held in the July 2006 time frame in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Corps by issuance of a public notice and/or notices in the local media.

5. It is anticipated that the DSEIS will be made available for public review in December 2006.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 06–5385 Filed 6–13–05; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2006–0026]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add systems of records.

SUMMARY: The Department of the Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on July 14, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM01700–1

SYSTEM NAME:

DON General Moral, Welfare, and Recreation Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel authorized to use DON-sponsored Morale, Welfare, Recreation (MWR) services, youth services, athletic and recreational services, Armed Forces Recreation Centers, DON recreation machines, and/or to participate in MWR-type activities, to include: Bingo games; professional entertainment groups recognized by the Armed Forces Entertainment; DON athletic team members; ticket holders of athletic events; and units of national youth groups such as Boy Scouts, Girl Scouts, and 4–H Clubs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; branch of service; home and duty station addresses; home, business, and cell telephone numbers; military/civilian status; Social Security Number; Unit Identification Code (UIC); travel orders/vouchers; security check results; command contact person; boat and mooring storage agreement; insurance information; contact address; contract, waiver, release, and indemnification agreements; check out and control sheets; bingo pay-out control sheet indicating individual name, grade, Social Security Number, duty station, dates and amount of bingo winnings

paid; and Internal Revenue Forms W2–G and 5754, (Gambling Winnings and Statement by Person(s) Receiving Gambling Winnings, respectively).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps, Section 6041, Internal Revenue Code; BUPERS Instruction 1710.13A, Regulations, Policies and Procedures for Navy Food, Beverage and Entertainment Operations 1996; MCOP–1700.27, Ch1; NAVSO P–3520; and E.O. 9397 (SSN).

PURPOSE(S):

To administer programs devoted to the mental and physical well-being of DON personnel and other authorized users; to document the approval and conduct of specific contests, shows, entertainment programs, sports activities/competitions, and other MWR-type activities and events sponsored or sanctioned by the DON.

Information will be used to market and promote similar MWR type activities conducted by other DoD organizations.

To provide a means of paying, recording, accounting, reporting, and controlling expenditures and merchandise inventories associated with bingo games.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service to report all monies and items of merchandise paid to winners of games whose one-time winnings are $1,200 or more.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, cards, magnetic tapes, discs, computer printouts, and electronic storage media.

RETRIEVABILITY:

Name and Social Security Number of patron.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Bingo records are maintained on-site for four years and then shipped to a Federal Records Center for storage for an additional three years. After seven years, records are destroyed.

All other documents are destroyed after 2 years, unless required for current operation.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: For Navy activities—Commander, Navy Personnel Command (Pers–655C2), 5720 Integrity Drive, Millington, TN 38055–6500; For Marine Corps activities—Commandant of the Marine Corps, Personal and Family Readiness Division (MRX), 3044 Catlin Avenue, Quantico, VA 22134–5099.

Record Holders: Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.* The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.* The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual or group receiving the service and bingo pay-out control sheets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5394 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2006–0027]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 14, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05000–2

SYSTEM NAME:

Administrative Personnel Management System (March 8, 2006, 71 FR 11595) .

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Military, civilian (including former members and applicants for civilian employment), contractor employees, visitors, volunteers, and/or dependent family members.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Records and correspondence needed to manage personnel, projects, and access to programs such as: Name; Social Security Number; date of birth; photo id; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; Common Access Card (CAC) issuance and expiration; food service meal entitlement code; occupation; hire/termination dates; type of appointment; leave; location; (assigned organization code and/or work center code); Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional responsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; computer use responsibility agreements; and other data needed for personnel, financial, line, safety and security management, as appropriate.''

PURPOSE(S):

Delete entry and replace with: ''To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking activities; rental and credit organizations; name change location; checklist prior to leaving activity; safety reporting/monitoring; and, similar administrative uses requiring personnel data.

To arbitrators and hearing examiners for use in civilian personnel matters relating to civilian grievances and appeals.

To authenticate authorization for access to services and spaces such as Morale, Welfare, and Recreation (MWR) facilities and food services.''

* * * * *

NM05000–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, civilian (including former members and applicants for civilian employment), contractor employees, visitors, volunteers, and/or dependent family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel, projects, and access to programs such as: Name; Social Security Number; date of birth; photo id; grade and series or rank/rate; biographical data; security clearance; education; experience characteristics and training histories; qualifications; Common Access Card (CAC) issuance and expiration; food service meal entitlement code; trade; hire/termination dates; type of appointment; leave; location; (assigned organization code and/or work center code); Military Occupational Series (MOS); labor code; payments for training, travel advances and claims; hours assigned and worked; routine and emergency assignments; functional rsponsibilities; access to secure spaces and issuance of keys; travel; retention group; vehicle parking; disaster control; community relations (blood donor, etc); employee recreation programs; retirement category; awards; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; computer use responsibility agreements; and other data needed for personnel, financial, line, safety, and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian, military, and contractor personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking activities; rental and credit organizations; name change location; checklist prior to leaving activity; safety reporting/monitoring; and, similar administrative uses requiring personnel data.

To arbitrators and hearing examiners for use in civilian personnel matters relating to civilian grievances and appeals.

To authenticate authorization for access to services and spaces such as Morale, Welfare, and Recreation (MWR) facilities and food services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, and supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Defense Manpower Data Center; employment papers; records of the organization; official personnel jackets; supervisors; official travel orders; educational institutions; applications; duty officer; investigations; OPM officials; and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5395 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2006–0028]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 14, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N08370–1

SYSTEM NAME:

Weapons Registration (May 9, 2003, 68 FR 24959) .

CHANGES:

* * * * *

N08370–1

SYSTEM IDENTIFIER:

Delete entry and replace with: ''NM08370–1''.

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with: ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Individuals registering firearms or other weapons with station security offices and/or Provost Marshal; all individuals who purchase a firearm or weapon at authorized exchange activities; and/or individuals who reside in government quarters who possess privately-owned firearms.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Weapon registration records; weapon permit records; notification to commanding officers of failure to register firearm purchased at authorized exchanges; exchange notification of firearm purchase; and all other records showing name, rank, SSN, organization, physical location of subject weapon, weapon description and such other identifiable items required to comply with all Federal, state, and local weapons registration ordinances.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN) .''

* * * * *

STORAGE:

Delete entry and replace with: ''Paper, microfiche, and automated records.''

* * * * *

SAFEGUARDS:

Delete entry and replace with: ''Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.''

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Records destroyed when individual leaves command.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl. htm.*''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Written request must contain name and social security number and be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Written request must contain name and social security number and be signed.''

* * * * *

NM08370–I

SYSTEM NAME:

Weapons Registration.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals registering firearms or other weapons with station security offices and/or Provost Marshal; all individuals who purchase a firearm or weapon at authorized exchange activities; and/or individuals who reside in government quarters who possess privately-owned firearms.

CATEGORIES OF RECORDS IN THE SYSTEM:

Weapon registration records; weapon permit records; notification to commanding officers of failure to register firearm purchased at authorized exchanges; exchange notification of firearm purchase; and all other records showing name, rank, SSN, organization, physical location of subject weapon, weapon description and such other identifiable items required to comply with all Federal, state, and local weapons registration ordinances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To assure proper control of weapons on installations and to monitor and control purchase and disposition of weapons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfiche, and automated records.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records destroyed when individual leaves command.

SYSTEM MANAGER(S) AND ADDRESS:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Written request must contain name and social security number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

Written request must contain name and social security number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of activity, investigators, witnesses, and correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–5396 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2006–0029]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 14, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on June 6, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NO1133–2

SYSTEM NAME:

Recruiting Enlisted Selection System (February 22, 1993, 58 FR 10710).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: ''Primary System: Headquarters, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057 and contractor operated facility.

Decentralized Segments—Navy Recruiting Area Commanders, Navy Recruiting District Headquarters, Navy Recruiting 'A' Stations, Navy Recruiting Branch Stations, and Military Entrance Processing Stations (MEPS).''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Prospective applicants, delayed-entry personnel, applicants for regular and reserve enlisted programs, and any other individuals who have initiated correspondence pertaining to enlistment in the U.S. Navy.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Personal history, education, professional qualifications, mental aptitude, physical qualifications, character and interview appraisals, National Agency Checks and certifications, service performance and congressional or special interests.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 133, 275, 503, 504, 508, 510, 672, 1071–1087, 1168, 1169, 1475–1480, 1553, 5013; and E.O. 9397 (SSN).''

PURPOSE(S):

Add the following paragraph: ''To provide delayed entry personnel with training modules and allow DON officials to use the Navy Applicant Management Information System (NAMIS) to conduct surveys and administer on-line screening tool that identify whether the delayed entry personnel qualify for special operations programs and other high-priority programs.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete third paragraph and replace with: ''To the Department of Veterans Affairs in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.''

* * * * *

STORAGE:

Delete entry and replace with: ''Automated and paper records.''

RETRIEVABILITY:

Delete entry and replace with: ''Name, Social Security Number, User id and password.''

SAFEGUARDS:

Delete entry and replace with: ''Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 5722 Integrity Drive, Millington, TN 38054–5057 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book.

Letter should contain full name, address, Social Security Number and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 5722 Integrity Drive, Millington, TN 38054–5057 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book.

Letter should contain full name, address, Social Security Number and signature.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Individual; Navy recruiting and reserve recruiting personnel and administrative staff; medical personnel conducting physical examinations and/or private physicians providing consultations or patient history; character and employer references; educational institutions, staff and faculty members; Selective Service Commission; local, state, and federal law enforcement agencies; prior or current military service records;

Members of Congress; and DoD/DON officials.''

* * * * *

NO1133–2

SYSTEM NAME:

Recruiting Enlisted Selection System.

SYSTEM LOCATION:

Primary System: Headquarters, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057 and contractor operated facility.

Decentralized Segments—Navy Recruiting Area Commanders, Navy Recruiting District Headquarters, Navy Recruiting 'A' Stations, Navy Recruiting Branch Stations, and Military Entrance Processing Stations (MEPS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective applicants, delayed-entry personnel, applicants for regular and reserve enlisted programs, and any other individuals who have initiated correspondence pertaining to enlistment in the U.S. Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal history, education, professional qualifications, mental aptitude, physical qualifications, character and interview appraisals, National Agency Checks and certifications, service performance and congressional or special interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, 275, 503, 504, 508, 510, 672, 1071–1087, 1168, 1169, 1475–1480, 1553, 5013; and E.O. 9397 (SSN).

PURPOSE(S) :

To provide recruiters with information concerning personal history, education, professional qualifications, mental aptitude, and other individualized items which may influence the decision to select/non-select an individual for enlistment in the U.S. Navy.

To provide historical data for comparison of current applicants with those selected in the past.

To provide delayed entry personnel with training modules and allow DON officials to use the Navy Applicant Management Information System (NAMIS) to conduct surveys and administer on-line screening tool that identify whether the delayed entry personnel qualify for special operations programs and other high-priority programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To the Department of Veterans Affairs in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

Name, Social Security Number, User id and password.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records are normally maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 5722 Integrity Drive, Millington, TN 38054–5057 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book.

Letter should contain full name, address, Social Security Number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 5722 Integrity Drive, Millington, TN 38054–5057 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book.

Letter should contain full name, address, Social Security Number and signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Navy recruiting and reserve recruiting personnel and administrative staff; medical personnel conducting physical examinations and/or private physicians providing consultations or patient history; character and employer references; educational institutions, staff and faculty members; Selective Service Commission; local, State, and Federal law enforcement agencies; prior or current military service records; Members of Congress; and DoD/DON officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7) as applicable. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 06–5398 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2006–0030]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 14, 2006, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01131–1

SYSTEM NAME:

Officer Selection and Appointment System (February 22, 1993, 58 FR 10708).

CHANGES:

* * * * *

SYSTEM LOCATION:

In first paragraph, delete ''4015 Wilson Boulevard, Arlington, VA 22203–1991'' and replace with: ''5722 Integrity Drive, Millington, TN 38054–5057''.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Delete third paragraph and replace with: ''To the Department of Veterans Affairs in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In first paragraph, delete ''4015 Wilson Boulevard, Arlington, VA 22203–1991'' and replace with: ''5722 Integrity Drive, Millington, TN 38054–5057''.

NOTIFICATION PROCEDURE:

In first paragraph, delete ''4015 Wilson Boulevard, Arlington, VA 22203–1991'' and replace with: ''5722 Integrity Drive, Millington, TN 38054–5057''.

RECORD ACCESS PROCEDURES:

In first paragraph, delete ''4015 Wilson Boulevard, Arlington, VA 22203–1991'' and replace with: ''5722 Integrity Drive, Millington, TN 38054–5057''.

* * * * *

N01131–1

SYSTEM NAME:

Officer Selection and Appointment System.

SYSTEM LOCATION:

Primary System: For Active Duty Recruiting—Headquarters, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057; For Reserve Recruiting: Naval Reserve 4 Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001.

Decentralized segments—Headquarters, Navy Recruiting Activities and subsidiary offices; Armed Forces Entrance and Examining Centers; Chief of Naval Personnel; Chief, Bureau of Medicine and Surgery; National Personnel Records Centers; Naval Reserve Units; Naval Education and Training Activities; NROTC Units; Naval Sea Systems Command Headquarters; Naval Intelligence Command and subsidiary activities; Department of Defense Medical Examination Review Board; Naval Reserve Recruiting Command detachments and reserve recruiting field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made application for direct appointment to commissioned grade in the Regular Navy or Naval Reserve, applied for officer candidate program leading to commissioned status in the U.S. Naval Reserve, applied for a Navy/Marine Corps sponsored NROTC scholarship program or preparatory school program, applied for interservice transfer to Regular Navy or Naval Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and nonautomated form concerning any applicant's personal history, education, professional qualifications, physical qualifications, mental aptitude, character and interview appraisals, National Agency Checks and certifications of background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 10 U.S.C. Sections governing authority to appoint officers; 10 U.S.C. 591, 600, 716, 2107, 2122, 5579, 5600; Merchant Marine Act of 1939 (as amended); and E.O.s 9397, 10450, and 11652.

Purpose(s):

To manage and contribute to the recruitment of qualified men and women for officer programs and the regular and reserve components of the Navy.

To ensure quality military recruitment and to maintain records pertaining to the applicant's personal profile for purposes of evaluation for fitness for commissioned service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

To the Department of Veterans Affairs in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's

compilation of systems notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Automated records are stored on magnetic tape; paper records are stored in file folders.

RETRIEVABILITY:

Name and Social Security Number of applicant.

SAFEGUARDS:

Records kept in file cabinets and offices locked after working hours. Based on requirements of user activity, some buildings have 24-hour security guards.

RETENTION AND DISPOSAL:

Application records maintained six months; after six months, summary sheets maintained for five years at National Record Storage Center. NROTC application records kept for current year only. Correspondence files maintained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

For Active Duty Recruiting: Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057.

For Reserve Recruiting: Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries for active duty recruiting information to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 5722 Integrity Drive, Millington, TN 38054–5057; or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting information to the Commander, Naval Reserve Recruiting Command (ATTN: Privacy Act Coordinator), 4400 Dauphine Street, New Orleans, LA 70146–5000, or to the applicable Naval Reserve Recruiting Detachment.

Letter should contain full name, address, Social Security Number and signature. The individual may visit any location. Proof of identification will consist of picture-bearing or other official identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries for active duty recruiting information to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 5722 Integrity Drive, Millington, TN 38054–5057; or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting information to the Commander, Naval Reserve Recruiting Command (ATTN: Privacy Act Coordinator), 4400 Dauphine Street, New Orleans, LA 70146–5000, or to the applicable Naval Reserve Recruiting Detachment.

Letter should contain full name, address, Social Security Number and signature. The individual may visit any location. Proof of identification will consist of picture-bearing or other official identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Recruiting personnel and employees processing applications; medical personnel conducting physical examination and private physicians providing consultations or patient history; character and employer references named by applicants; educational institutions, staff and faculty members; Selective Service Commission; local, state, and Federal law enforcement agencies; prior or current military service record; Members of Congress; Commanding Officer of Naval Unit, if active duty; Department of Navy offices charged with personnel security clearance functions. Other officials and employees of the Department of the Navy, Department of Defense, and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (k)(5) , (k)(6) and (k)(7), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 06–5399 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[USN–2006–0032]

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The U.S. Marine Corps is deleting one system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Effective June 14, 2006.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: June 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MFD00010

SYSTEM NAME:

Per Diem and Travel Payment System (February 22, 1993, 58 FR 10630).

Reason: The system of records is maintained under Defense Finance and Accounting Service (DFAS) systems of records notice T7333, entitled, Travel Payment System (September 19, 2005, 70 FR 54906).

[FR Doc. 06–5401 Filed 6–13–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, 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 August 14, 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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. 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: June 9, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Study of Education Data Systems and Decisionmaking.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 235.

Burden Hours: 223.

Abstract: The purpose of the study is to examine the prevalence, use, and outcomes of education data systems for accountability, assessment, and instructional purposes.

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 3139. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–9267 Filed 6–13–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.357]

Reading First

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing application deadline.

SUMMARY: Under the Reading First program, we award Targeted Assistance Grants to State educational agencies (SEAs) that demonstrate an increase in student achievement in schools and districts participating in the Reading First program.

As discussed elsewhere in this notice, the data that States must submit to demonstrate an increase in student achievement are the same data that States must submit in their annual performance reports for their Reading First State grants. We are therefore permitting States to apply for Targeted Assistance Grants by submitting their annual Reading First performance reports. No separate application is required. This notice establishes July 31, 2006 as the deadline date for submitting the annual performance report to apply for a Targeted Assistance Grant.

Application Deadline: July 31, 2006.

SUPPLEMENTARY INFORMATION:

Which SEAs Are Eligible for a Targeted Assistance Grant?

An SEA is eligible for a Targeted Assistance Grant if it can show an increase in student achievement over two consecutive years. Therefore, an SEA's eligibility for this grant begins when the State has three years of student achievement data. This may include either—

(a) Student data representing three years of school-level implementation of the Reading First program; or

(b) Student data representing two years of school-level implementation of the Reading First program, along with baseline data from the year preceding implementation.

Specifically, the SEA's application must demonstrate that an increasing percentage of third-grade students in the schools served by the local educational agencies that receive Reading First funds are reaching the proficient level in reading for each of two consecutive years in each of the following categories—

(a) Economically disadvantaged students;

(b) Students from each major racial and ethnic group;

(c) Students with disabilities; and

(d) Students with limited English proficiency.

The SEA must also demonstrate in its application that for each of those two consecutive years, the schools receiving Reading First funds are improving the reading skills of students in grades 1, 2, and 3 based on instructional reading assessments, and that increasing percentages of students in the State are reading at grade level or above.

Who Will Review State Applications for Targeted Assistance Grants?

The expert review panel convened to evaluate State applications for Reading First State Grants will also review

applications for Targeted Assistance Grants to determine whether the data the SEA submits demonstrate an increase in student achievement in schools and districts participating in the Reading First program.

How Is the Targeted Assistance Grant Application Submitted?

The data that States must submit to demonstrate an increase in student achievement are the same data States must submit in their annual performance reports. Accordingly, the annual performance report will serve as the Targeted Assistance Grant application, and States may apply for a Targeted Assistance Grant by submitting their annual performance reports. The annual performance report is available and submitted electronically at: *https://www.readingfirstapr.org.* States should indicate that they want their data reviewed in consideration for a Targeted Assistance Grant by checking the appropriate box on the annual performance report and by providing the assurances and information requested. In order to be considered for a Targeted Assistance Grant, the annual performance report must be submitted by July 31, 2006. Only those States that want to be considered for a Targeted Assistance Grant this year must submit their annual performance reports by this date. All other States must submit their reports no later than November 30, 2006.

How Will Targeted Assistance Grants be Awarded to Eligible States?

The Department will award the grants to eligible SEAs based on the information provided in the annual performance report and a statutory formula for determining award amounts. The statutory formula is calculated based on the proportion of children aged 5 to 17 who reside within the State and are from families with incomes below the poverty line, compared to the number of children aged 5 to 17 from families with incomes below the poverty line who reside in all States with approved Targeted Assistance Grant applications for that year. Poverty data are drawn from the most recent fiscal year for which satisfactory data are available.

FOR FURTHER INFORMATION CONTACT: Sandi Jacobs, telephone: (202) 401–4877 or by e-mail: *sandi.jacobs@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 notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access To This Document: You may view this document, as well as other U.S. Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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 version of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6364.

Dated: June 8, 2006.

Henry Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–9287 Filed 6–13–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Mathematics Advisory Panel

AGENCY: National Mathematics Advisory Panel, U.S. Department of Education.

ACTION: Notice of open meeting and public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting, including a public hearing, with members of the National Mathematics Advisory Panel. The notice also describes the functions of the Panel. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Wednesday, June 28, 2006 and Thursday, June 29, 2006. *Time:* Meetings on June 28, 2006: 9 a.m. to 10 a.m. and 3 p.m.–4:30 p.m.; open session for *public comment* on June 29, 2006: 1 p.m. to 4 p.m.

ADDRESSES: All meetings and the open session for public comment will be held at the University of North Carolina, Chapel Hill. However, please note the locations for meetings on each day.

- June 28th Meetings—The Kenan Center, Kenan Drive, Building 498.
- June 29th Open session with public comment—The Carolina Inn, Pittsboro Street.

FOR FURTHER INFORMATION CONTACT: Tyrrell Flawn, Executive Director, National Mathematics Advisory Panel, 400 Maryland Avenue, SW., Washington, DC 20202; telephone: (202) 260–8354.

SUPPLEMENTARY INFORMATION: The Panel was established by Executive Order 13398. The purpose of this Panel is to foster greater knowledge of and improved performance in mathematics among American students, in order to keep America competitive, support American talent and creativity, encourage innovation throughout the American economy, and help State, local, territorial, and tribal governments give the nation's children and youth the education they need to succeed.

The June 28th meeting will begin with a discussion of methodology from 9–10 a.m. followed later in the day from 3–4:30 p.m with a report on subgroup progress in the areas of Conceptual Knowledge and Skills, Learning Processes, Instructional Practices, and Teachers, as set forth in the Executive Order. Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Jennifer Graban at (202) 260–1491 or by e-mail at *Jennifer.Graban@ed.gov.*

On June 29th, from 1–4 p.m. the public is invited to comment on elements of the Executive Order and the Panel's work. If you are interested in participating in the open session on June 29th, please contact Jennifer Graban at 202–260–1491 or *Jennifer.Graban@ed.gov* to reserve time on the agenda. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. Participants will be allowed five minutes to make their comments. At the meeting, participants are also encouraged to submit three written copies of their comments.

Given the expected number of individuals interested in providing comments at the meeting, reservations for presenting comments should be made as soon as possible. Reservations will be processed on a first-come, first-served basis. Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments. Written comments will be accepted at the meeting site, via e-mail at *tyrrell.flawn@ed.gov,* or mailed to Tyrrell Flawn, Executive Director, National Math Panel, 400 Maryland Avenue, SW., Washington, DC 20202.

The Panel will submit to the President, through the Secretary, a preliminary report not later than January 31, 2007, and a final report not later than February 28, 2008. Both reports shall, at a minimum, contain recommendations, based on the best available scientific evidence.

The meeting site is accessible to individuals with disabilities. Individuals who will need accommodations in order to attend the meeting such as interpreting services, assistive listening devices, or materials in alternative format, should notify Alyson Knapp at 202–260–0583 or by e-mail at *Alyson.Knapp@ed.gov* no later than June 19, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability.

Records are kept of all Panel proceedings and are available for public inspection at the staff office for the Panel, from the hours of 9 a.m. to 5 p.m.

Dated: June 8, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–5384 Filed 6–13–06; 8:45am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed reinstatement, and three-year approval to the Form RW–859, ''Nuclear Fuel Data Survey.'' The previous version of the Form RW–859 survey was discontinued on February 28, 2005.

DATES: Comments must be filed by August 14, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jim Finucane. To ensure receipt of the comments by the due date, submission by fax (202–287–1934) or e-mail *jim.finucane@eia.doe.gov* is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, 950 L'Enfant Plaza, SW., U.S. Department of Energy, Washington, DC 20585–0650. Alternatively, Jim Finucane may be contacted by telephone at 202–287–1966.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Jim Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

This data collection will provide the Office of Civilian Radioactive Waste Management (OCRWM) of DOE with detailed information concerning the spent nuclear fuel generated by the respondents (commercial utility generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and will need this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.), which will be the final disposal site for the spent fuel and high-level radioactive waste materials.

II. Current Actions

EIA will be requesting a reinstatement with revisions and a three-year approval of its form RW–859, ''Nuclear Fuel Data Survey.'' As in previous surveys, all data will be collected once. Only changes in the specific previously reported data elements will require updating.

The current Form RW–859 redesign effort and associated changes has several fundamental goals and objectives:

—Maintain the fidelity of collection of the information required by OCRWM, by continuing to collect quality data on reactors, historical spent fuel discharges, projections of spent fuel discharges, pool capacities and inventories, and special fuel and non-fuel forms relevant to OCRWM needs;
—Simplify the process of data collection and validation, by enhancing the ability of respondents to provide data through electronic data transfer in any available format (spreadsheet, database, etc.);
—Minimize the impacts of changes to the supporting database and associated software by maintaining the look and feel of previous systems and by providing incremental improvements without the need for outside programming support; and
—Enhance internal reports to improve the quality of submitted data by enhancing existing procedures through the use of internal reporting tools to standardize and automate data quality and consistency checks.

The major changes to the Form RW–859 survey include the following:

The EIA is proposing to modify the structure of the Form RW–859 survey form to organize the data into separate utility, reactor, discharged fuel, storage facility, non-fuel, and comments schedules. The seven sections from the 2002 version of the survey would be replaced with the six schedules. The redesign increases the visibility of storage facilities as individual entities.

The collection of all discharged fuel data in a single survey section thus consolidates all basic fuel data (enrichment, weight, burnup, discharge date) for all fuel, including special forms to ensure consistent, non-repetitive data. This would involve the inclusion of data on special fuel forms (consolidated fuel, fuel in canisters, fuel rods, fuel pieces) as a supplement to the basic fuel data survey section, rather than being collected in separate sections as in previous surveys.

The revised form eliminates the collection of duplicative information. Previous surveys collected contact information separately for each reactor; the new survey methodology collects and stores information once for an

individual that may report for multiple reactors or storage facilities. The survey instructions have been clarified and modified in response to comments made by respondents on previous surveys.

The Appendices to the survey form have been updated. Included as an Appendix are updated tables incorporating new fuel types and a revised simplified methodology for classifying fuel types. Fuel type codes from previous surveys have not changed, so there is no need for a revision to previously submitted data.

The DOE last collected the Form RW–859 survey containing data as of December 31, 2002. Current respondents will be provided with this 2002 survey data to update. A three-year clearance is being requested for this survey since no definitive plans have been made on when the next Form RW–859 survey will be collected. Respondents will be notified prior to the next data collection.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 40 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, June 7, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–9264 Filed 6–13–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Office of Civilian Radioactive Waste Management's Appendix C—Delivery Commitment Schedule, NWPA–830G Appendix G—Standard Remittance and Advice for Payment for Fees, and Annex A and Annex B to Appendix G—Standard Remittance Advice for Payment of Fees to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by July 14, 2006. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to John Asalone, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by fax at 202–395–7285 or e-mail to *John_A._Asalone@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by fax (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Appendix C—Delivery Commitment Schedule, NWPA—830G Appendix G—Standard Remittance and Advice for Payment for Fees, and Annex

A and Annex B to Appendix G—Standard Remittance Advice for Payment of Fees.

2. Office of Civilian Radioactive Waste Management (OCRWM).

3. OMB Number 1901–0260.

4. Three-year extension.

5. Mandatory.

6. NWPA–830C ''Delivery Commitment Schedule,'' is designed for contract holders to designate the facility where DOE will accept their fuel, the number of assemblies to be accepted, and the mode of transportation to ship the assemblies. The information collected will be used to determine the Federal waste management system configuration. NWPA–830G (and Annex A and Annex B of schedule G) ''Standard Remittance Advice for Payment of Fees,'' is designed to serve as the source document for entries into DOE accounting records to transmit data from Purchasers to the DOE concerning payment into the Nuclear Waste Fund of their fees for spent nuclear fuel and high-level waste disposal.

7. Business or other for-profit.

8. 2,532 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC, June 7, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–9265 Filed 6–13–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–75–000]

Alcoa Inc.; Notice of Petition for Declaratory Order

June 7, 2006.

Take notice that on June 1, 2006, Aloca Inc. filed a petition seeking pursuant to 18 CFR 365.207(a), exemption from the requirements of the Public Utility Holding Company Act of 2005 pursuant to 18 CFR 366.3(b)(1), 366.3(d) and 366.4(b)(3).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9291 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA06–5–000]

Alcoa Power Generating Inc. Long Sault Division; Notice of Request for Waiver or Exemption

June 7, 2006.

Take notice that on May 25, 2006, Alcoa Power Generating Inc.—Long Sault Division filed a motion requesting partial waiver or exemption from the requirements of Order No. 889.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9293 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–383–000]

Alliance Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

June 7, 2006.

Take notice that on June 1, 2006, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective June 22, 2006:

Second Revised Sheet No. 2
Original Sheet No. 277B

Original Sheet No. 277C
Original Sheet No. 277D

Alliance states that it is submitting the proposed tariff sheets to implement a mechanism for awarding capacity that becomes available on its system to interested shippers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9296 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–351–000, CP06–367–000, and CP06–368–000]

Bluewater Gas Storage, LLC; Notice of Application

June 7, 2006.

Take notice that on May 26, 2006, Bluewater Gas Storage, LLC (Bluewater), 1333 Clay Street, Suite 1600, Houston, Texas 77210, filed in Docket Nos. CP06–351–000, CP06–367–000, CP06–368–000 an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, for authorization to own and operate in interstate commerce an existing natural gas storage facility located in St. Clair and Macomb County, Michigan all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Website 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, call toll-free (866) 208–3676 or for TTY (202) 502–8659.

Specifically, Bluewater seeks a certificate of public convenience and necessity to own and operate an existing high deliverability gas storage facility. Bluewater also requests a blanket certificated pursuant to subpart G of 18 CFR part 284 that will permit Bluewater to provide open-access firm and interruptible natural gas storage services on behalf of others with pre-granted abandonment of such services; a blanket certificate pursuant to subpart F of 18 CFR part 157 that will permit Bluewater to construct, acquire, operate, and abandon certain facilities following the construction of the proposed project; authorization to provide the proposed storage services at market based rates; and approval of a *pro forma* FERC Gas Tariff.

Any questions regarding this application should be directed to James F. Bowe, Jr., Dewey Ballantine LLP, 1775 Pennsylvania Avenue, NW., Washington, DC 20006–4605, or call (202) 429–1444.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: June 28, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9290 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–384–000]

Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

June 7, 2006.

Take notice that on June 2, 2006, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets proposed to become effective July 5, 2006:

Fifth Revised Sheet No. 105
First Revised Sheet No. 376
Fifth Revised Sheet No. 396

Guardian states that the purpose of this filing is to update Guardian's tariff to reflect a change in the name of the operator of Guardian from Northern Plains Natural Gas Company, LLC to ONEOK Partners GP, L.L.C. Guardian also is proposing a minor housekeeping change to Exhibit A to the Rate Schedule PAL Service Agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9297 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–069]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

June 7, 2006.

Take notice that on May 30, 2006, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective June 30, 2006:

Fourth Revised Sheet No. 1
Sheet Nos. 4021–4029
Original Sheet No. 4030
Original Sheet No. 4031
Sheet Nos. 4032–4099

Gulf South states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9289 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–016]

Texas Gas Transmission, LLC; Notice of Compliance Filing

June 7, 2006.

Take notice that on May 30, 2006, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on the dates set forth on the respective tariff sheets in accordance with Article II of the Stipulation and Agreement of Settlement.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9295 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–33–003]

Wyckoff Gas Storage Company LLC; Notice of Application

June 7, 2006.

On June 2, 2006, Wyckoff Gas Storage Company, LLC, (Wyckoff), Two Warren Place, 6120 Yale Avenue, Suite 700, Tulsa, OK 74136–4216, pursuant to section 7(c) of the Natural Gas Act (NGA) and parts 157 of the Commission's regulations, filed an abbreviated application to amend its certificates of public convenience and necessity issued on October 6, 2003 (105 FERC ¶ 61,027), and amended on April 11, 2006 (115 FERC ¶ 61,207) to: (1) Move the surface location of four of the jurisdictional injection/withdrawal wells to a site on property recently acquired in fee by Wyckoff, (2) modify the design of the dehydration unit at the field to incorporate the most updated technology, (3) install a water line adjacent to approved Chace lateral for possible future use; and (4) install fiber optic cable adjacent to each of its new pipelines to provide communications capability at the field. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to T.W. Cook, Wyckoff Gas Storage Company, LLC, Two Warren Place, 6120 Yale Avenue, Suite 700, Tulsa, OK 74136, (918) 524–8503.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: June 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9298 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Reminding Public Utilities Required by Federal Power Act Section 305(C) to File FERC–566 (Twenty Largest Purchasers) of Need To Make This Filing

June 7, 2006.

Take notice that public utilities required by Federal Power Act section 305(c), 16 U.S.C. 825(c) (2000), and by the Commission's regulations, 18 CFR 46.3 (2005), to file FERC–566, ''A Public Utility's Twenty Largest Purchasers,'' are reminded of the need to timely make such filings. Public utilities that are required to make such filings and that did not do so by January 31, 2006 should do so immediately.

The annual FERC–566, a listing by public utilities of the names and addresses of the utility's top twenty largest purchasers of electric energy, measured in kilowatt hours sold (for purposes other than resale) during any of the three preceding calendar years, was due on or before January 31, 2006 pursuant to 18 CFR 46.3 (2005). Public utilities that did not timely submit FERC–566 should submit FERC–566 immediately. More information on this filing can be found on the Commission's Web site: *http://www.ferc.gov/docs-filing/hard-fil.asp#566.*

If you require further information on the FERC–566, contact Pat Morris at (202) 502–8730.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9292 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485–033, Massachusetts]

Northeast Generation Company; Notice of Availability of Environmental Assessment

June 7, 2006.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have reviewed the application, filed May 12, 2006, by the project licensee, Northeast Generation Company, for a temporary amendment of license for the Northfield Mountain Pumped Storage Project. The request is for a deviation from required project operating limits to allow additional operating flexibility this summer. The project is located on the east side of the Connecticut River, in the towns of Northfield and Erving, in Franklin County, Massachusetts.

The proposal would modify the upper reservoir's water surface elevation limits from 938 and 1000.5 feet mean sea level (msl), to 920 and 1004.5 feet msl, respectively, and allow a maximum daily generation of 10,465 megawatt hours (MWh) under certain ISO–NE emergency operating conditions from June 3, 2006, through September 30, 2006. At all other times, the upper reservoir would be operated within existing limits, and generation would be within the existing maximum limit of 8,475 MWh. The project uses the reservoir at the Turners Falls Project (FERC No. 1889) on the Connecticut River as its lower reservoir, and proposes no changes in its operating elevations.

In the environmental assessment (EA), Commission staff has analyzed the probable environmental effects of the proposed amendment and has concluded that approval, with the addition of staff-recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to the Commission order titled ''Order Granting Temporary Amendment of License,'' issued June 7, 2006, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2485) in the docket number field to access the document. For assistance, call (202) 502–8222, or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E6–9294 Filed 6–13–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8184–1]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Good Neighbor Environmental Board. The Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The purpose of the meeting is to hold a public comment session and also to hear presentations from local experts on the topic of its next report to the President: ''Environmental Protection and Border Security on the U.S. Border with Mexico.'' A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold its next meeting on Tuesday, July 18, from 8:30 a.m. (registration at 8 a.m.) to 5:30 p.m.

ADDRESSES: The meeting will be held in Gallery 3 at the Omni San Diego Hotel, 675 L Street, San Diego, California. Telephone: 619–231–6664. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, *koerner.elaine@epa.gov*, 202–233–0069, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the Board should be sent to Elaine Koerner, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Elaine Koerner at 202–233–0069 or *koerner.elaine@epa.gov.* To request accommodation of a disability, please contact Elaine Koerner, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 16, 2006.

Elaine Koerner,

Designated Federal Officer.

[FR Doc. 06–5412 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0329; FRL–8059–8]

Notice of Filing of a Pesticide Petition for the Establishment of an Exemption from the Requirement of Regulations for Residues of Zucchini Yellows Mosaic Virus-Weak Strain (ZYMV-WK) in or on Cucurbits

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 the viruscide Zucchini Yellows Mosaic Virus-Weak Strain (ZYMV-WK) in or on cucurbits, including cucumber, cantaloupe, muskmelon, pumpkin, winter and summer squash, watermelon, zucchini, and other cucurbits.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0329 and pesticide petition number (PP) 6E7050, by one of the following methods:

•Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460-0001.

•*Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0329. 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 regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Gail Tomimatsu, Biopesticides and Pollution Prevention Division, (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8543; e-mail address: *tomimatsu.gail@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 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 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 6E7050. Bio-Oz Biotechnologies Ltd., Kibbutz Yad Mordechai, DN Hof Ashkelon 79145, Israel, proposes to establish an exemption from the requirement of a tolerance for residues of the viruscide Zucchini Yellows Mosaic Virus-Weak Strain (ZYMV-WK) in or on food commodities: cucurbits, including cucumber, cantaloupe, muskmelon, pumpkin, winter and summer squash, watermelon, zucchini, and other cucurbits. 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: June 1, 2006.

Janet L. Andersen,

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

[FR Doc. E6–9010 Filed 9–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0371; FRL–8062–8]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before August 14, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0371, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building); 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0371. 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 in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. 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: Tasha Gibbons, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0022; e-mail address: *gibbons.tasha@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 code112).
- 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

III. Products Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 82016–R. *Applicant*: EARTH-KIND, Inc.(Crane Creek Gardens) 17 3rd Ave. SE Stanley, ND 58784 *Product Name*: Fresh Cab. *Type of product*: biological rodent repellent *Active ingredient*: Balsam Fir Oil at 2.0%. *Proposed classification/Use*: None. T. Gibbons.

File Symbol: 82016–E. *Applicant*: EARTH-KIND, Inc. (Crane Creek Gardens) 17 3rd Ave. SE Stanley, ND 58784. *Product Name*: Canadian Wilderness Oil. *Type of product*: manufacturing use product *Active ingredient*: Balsam Fir Oil at 10.0%. *Proposed classification/Use*: None. T. Gibbons.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 30, 2006.

Janet L. Andersen,

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

[FR Doc. E6–8930 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0489; FRL–8072–1]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Pendimethalin in or on Fruiting Vegetable Group, Pome Fruit Group, Apple Pomace, Juneberry, Stone Fruit Group, and Pomegranate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of pendimethalin in or on fruiting vegetable group, pome fruit group, apple pomace, juneberry, stone fruit group, and pomegranate.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0489 and pesticide petition numbers (PP) 0E6175, 2E6450, 2E6464, and 2E6449, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

•*Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0489. 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, 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

•Crop production (NAICS code 111).

•Animal production (NAICS code 112).

•Food manufacturing (NAICS code 311).

•Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed **UNDER 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 the pesticide petitions 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 pendimethalin in or on fruiting vegetable group, pome fruit group, apple pomace, juneberry, stone fruit group, and pomegranate. EPA has determined that the pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of pendimethalin residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 0E6175, 2E6450, 2E6464, and 2E6449. Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390,proposes to establish tolerances for residues of the herbicide [N-(1-ethylpropyl)-3,4-dimethyl-2,6dinitrobenzenamine, (pendimethalin) and its 3, 5-dinitrobenzyl alcohol metabolite (CL 202347)] in or on the following food commodities:

1. *PP 0E6175* proposes to establish a tolerance for fruiting vegetable group 8 at 0.1 parts per million (ppm).

2. *PP 2E6450* proposes to establish tolerances for pome fruit group 11 at 0.05 ppm; apple pomace at 0.20 ppm, and juneberry at 0.05.

3. *PP 2E6464* proposes to establish a tolerance for stone fruit group 12 at 0.05 ppm.

4. *PP 2E6449* proposes to establish a tolerance for pomegranate at 0.05 ppm.

Section 408 (b)(3) of the amended FDCA requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above of the limit of detection of the designated method. In plants the method is aqueous organic solvent extraction, column clean up, and quantitation by GC. The method has a limit of quantitation (LOQ) of 0.05 ppm for pendimethalin and the alcohol metabolite is use to measure and evaluate the chemical residue(s).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 5, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–9198 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0145; FRL–8070–8]

Notice of Filing of Pesticide Petitions for Establishment and Amendment to Regulations for Residues of Boscalid in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice..

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0145 and pesticide petition numbers PP *3E6791*

and PP *5E7013* by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0145. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; fax number: (703) 305-0599; e-mail address: *madden.barbara@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 at the end of the pesticide petition summary of interest.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment 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

1. *PP 3E6791*. Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390, proposes to establish a tolerance for residues of the fungicide boscalid; 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro(1,1'-biphenyl)-2-yl) in or on food commodities leafy greens subgroup 4A, except head lettuce and leaf lettuce at 60 parts per million ppm and leaf petioles subgroup 4B at 45 ppm.

2. *PP 5E7013*. Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390, proposes to amend the tolerances in 40 CFR 180.589 for residues of the fungicide boscalid; 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro(1,1'-biphenyl)-2-yl) in or on the food commodities by increasing the established tolerances in or on the raw agricultural commodities; Fruit, pome, crop group, group 11, to include postharvest use at 8.0 ppm; Fruit, Stone, crop group 12, to include postharvest use, at 9.0 ppm. Additionally, IR-4 proposes to establish a tolerance for residues of the fungicide boscalid; 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro(1,1'-biphenyl)-2-yl) in or on the food commodity Belgian endive at 12.0 ppm.

The following analytical methods are used to measure and evaluate the chemical residues in plants the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by gas chromatography using mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by gas chromatography with electron capture detection.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–9202 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0503; FRL–8072–7]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Pendimethalin in or on Onion, Green; Leek; Onion, Welsh; Shallot, Fresh Leaves; and Strawberry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of pendimethalin in or on onion, green; leek; onion, welsh; shallot, fresh leaves; and strawberry.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0503 and pesticide petition numbers (PP) 5E6927 and 5E6928, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0503. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Shaja Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petitions 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 pendimethalin in or on onion, green; leek; onion, welsh; shallot, fresh leaves; and strawberry. EPA has determined that the pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of pendimethalin residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 5E6927 and 5E6928. Interregional Research Project Number 4 (IR-4), 681 U.S. Highway 1 South, North Brunswick, NJ 08902-3390,proposes to establish tolerances for residues of the herbicide [N-(1-ethylpropyl)-3,4-dimethyl-2,6dinitrobenzenamine, (pendimethalin) and its 3, 5-dinitrobenzyl alcohol metabolite (CL 202347)] in or on the following food commodities:

1. *PP 5E6927* proposes to establish tolerances for onion, green; leek; onion, welsh; and shallot, fresh leaves at 0.1 parts per million (ppm).

2. *PP 5E6928* proposes to establish a tolerance for strawberry at 0.05 ppm.

Section 408 (b)(3) of the amended FDCA requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and the tolerance be set at a level at or above of the limit of detection of the designated method. In plants the method is aqueous organic solvent extraction, column clean up, and quantitation by GC. The method has a limit of quantitation (LOQ) of 0.05 ppm for pendimethalin and the alcohol metabolite.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 5, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–9211 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0481; FRL–8071–4]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Fluopicolide 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 regulations for residues of fluopicolide in or on grapes, raisin, leafy vegetables (except Brassica) (Group 4), fruiting vegetables (Group 8), cucurbit vegetables (Group 9), potato, sweet potato roots, and wheat (forage/grain/hay/straw).

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0481 and pesticide petition number (PP) 5F7016, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0481. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6129: e-mail address: *whitehurst.janet@epa.com*.

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 5F7016. Valent U.S.A. Company, 1600 Riviera Ave., Walnut Creek, CA 94596-8025, proposes to establish a tolerance for residues of the fungicide fluopicolide in or on food commodities grape at 2.0 parts per million (ppm); raisin at 6.0 ppm; vegetable, leafy (except Brassica) (Group 4) at 20.0 ppm; vegetable, fruiting (Group 8) at 0.8 ppm; vegetable, cucurbit (Group 9) at 0.4 ppm; potato at 0.02 ppm; sweet potato, roots at 0.02 ppm; wheat, forage at 0.2 ppm; wheat, grain at 0.02 ppm; and wheat, hay and straw at 0.5 ppm. A practical analytical method utilizing liquid chromatography and mass spectrometry detection is available and has been validated for detecting and measuring levels of fluopicolide in and on various crops. The limit of quantitation is 0.01 ppm.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2006.

Donald R. Stubbs,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–9189 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0010; FRL–8070–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on Ethylene Dichloride (EDC), (CAS No. 107-06-2). These data were submitted pursuant to an enforceable testing consent agreement (ECA)/Order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER 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*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I 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–2003–0010. 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, 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.

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. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 ECAs/Orders must contain a statement that results of testing conducted pursuant to ECAs/Orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for EDC, a hazardous air pollutant (HAP) listed under section 112 of the Clean Air Act Amendments of 1990, were submitted by members of the HAP Task Force. These data were submitted pursuant to a TSCA section 4 ECA/Order and were received by EPA on March 3, 2006. The submission includes a final report titled ''1,2-Dichloroethane (EDC): Limited Pharmacokinetics and Metabolism Study in Fischer 344 Rats.'' (See document ID Nos. EPA–HQ–2003–0010–0081 and 0082''). EDC is used as a chemical intermediate principally in the production of vinyl chloride, but also vinylidene chloride, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, aziridines, and ethylene diamines. It is also used as a solvent.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: May 30, 2006.

Jim Willis,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–9280 Filed 6–13–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

June 1, 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 July 14, 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.: 3060–0441.

Title: Sections 90.621(b)(4) and (b)(5), Selection and Assignment of Frequencies.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 1,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $100,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them.

Section 90.621 requires a fixed mileage separation of 113 km (70 miles) between co-channel 800 and 900 MHz systems. However, section 90.621(b)(4) provides that co-channel stations may be separated by less than 113 km (70 miles) by meeting certain transmitter ERP and antenna height criteria, as listed in the Commission's Short-Spacing Table. Previously, engineering showings were submitted with applications demonstrating that a certain addition or modification would not cause interference to other licensees, even though the stations would be less distance apart. Section 90.621(b)(5) states that the separation between co-channel systems may be less than the separations table if an applicant submits with its application letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between their systems. Each letter from a co-channel licensee must certify that the system of the concurring licensee is constructed and fully operational. The applicant must also submit with its application a certificate of service indicating that all concurring co-channel licensees have been served with an actual copy of the application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–9072 Filed 6–13–06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–85–B (Auction No. 85); DA 06–874]

LPTV and TV Translator Digital Companion Channel Applications Filing Window for Auction No. 85; Auction Filing Window Rescheduled; Filing Requirements Regarding June 19–30, 2006 Window for LPTV and TV Translator Digital Companion Channel Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the application filing window is rescheduled for the LPTV and TV Translator Digital Companion Channel Auction No. 85. This notice also provides the specific procedures for the filing of short-form applications and associated technical data for Auction No. 85.

DATES: FCC Short-Form Application Filing Window—June 19, 2006 through June 30, 2006.

FOR FURTHER INFORMATION CONTACT: *Video Division, Media Bureau:* Hossein Hashemzadeh (technical) or Shaun Maher (legal) at (202) 418–1600. *Auction and Spectrum Access Division, Wireless Telecommunications Bureau:* For legal questions: Lynne Milne at (202) 418–0660: For general auction questions: Linda Sanderson at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 85 Filing Window Public Notice* released on April 20, 2006. The complete text of the *Auction No. 85 Filing Window Public Notice*, including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 85 Filing Window Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, such as, DA 06–874. The Auction No. 85 Filing Window Public Notice and related documents are also available on the Internet at the Commission's Web site at: *http://wireless.fcc.gov/auctions/85/.*

I. General Information

A. Background

1. The Federal Communications Commission (Commission) established rules and policies to facilitate the digital transition for low power television (LPTV), television (TV) translator and Class A TV stations. In its *LPTV DTV Report and Order*, 69 FR 69325, November 29, 2004, the Commission gave existing LPTV and TV translator service permittees and licensees the flexibility to choose one (and only one) of two methods to convert their existing analog stations to digital. Existing permittees and licensees in these services may either implement an on-channel digital conversion of their analog channel or they may seek a (second) digital companion channel that may be operated simultaneously with their analog channel. Permittees and licensees in these services are not guaranteed a digital companion channel and must identify a channel that can be operated consistent with the Commission's interference protection rules. At a date to be determined in the future, the Commission will require that the permittee or licensee terminate analog operation, return one of their two channels to the Commission, and operate their station only in digital mode. Permittees and licensees in these services may choose only one of these two methods for converting their existing analog stations to digital.

B. Eligibility and Filing Restrictions

2. This is a national filing window, meaning that applications for digital companion channels may be filed for any location in the United States and its

territories without geographic restrictions, subject to the Commission's technical rules, such as, 47 CFR 74.703 and 74.793. An application for a digital companion channel will not be accepted for filing if it fails to protect the authorized analog or digital facilities of a TV broadcast station, or the authorized analog facility of TV translator, LPTV, Class A television stations, or 700 MHz public safety or commercial wireless licensees. An application for a digital companion channel also must protect pending applications of TV translator, LPTV and Class A TV stations.

3. Only existing LPTV, TV translator and Class A TV station permittees and licensees will be permitted to file for digital companion channels during this window. Applicants for digital companion channels will be required to identify their associated analog station. Digital companion channel applications will be treated as minor change applications pursuant to 47 CFR 787(4)(b). The protected contour of the proposed digital station must overlap the protected contour of the associated analog station. While the digital companion channel application must propose to serve the community of license of its associated analog facility, there is no requirement that the digital companion facility provide any prescribed level of service to the analog station's community of license.

4. Permittees and licensees seeking digital operation must choose between an on-channel digital conversion of their analog station or operating a digital companion LPTV or TV translator station. Any permittee or licensee that has a license, construction permit, or pending application for on-channel digital conversion will not be eligible to submit an application for a digital companion channel for the same station, and any such companion digital channel application will be dismissed.

5. Permittees and licensees filing in this window are eligible to apply for only a single digital companion channel for each existing analog channel. The Bureaus remind permittees and licensees that they will be required at some point—to be determined in the future—to return one of their two companion channels to the Commission, either the analog or the digital channel. The Bureaus also remind Class A TV permittees and licensees that all digital companion channels will be licensed as LPTV channels on a secondary, non-interference basis.

C. Application Freeze

6. Due to the change in the schedule for the filing window, the previously-announced freeze on the filing of LPTV, TV translator and Class A television analog and digital minor change, analog and digital displacement, and digital on-channel conversion applications, which started on April 3, 2006, will extend through June 30, 2006. Following the completion of the digital companion channel window on June 30, 2006, such minor change and displacement applications will once again be accepted. As an exception to this freeze, on-air operating stations demonstrating that they face imminent disruption of service may request special temporary authority where necessary to continue operations.

D. Mutually Exclusive Engineering Proposals

7. Following the close of the digital companion application filing window, the Media Bureau staff will evaluate the filings and determine which of the engineering proposals are mutually exclusive and must be resolved through competitive bidding in an auction. In the *LPTV DTV Report and Order,* the Commission stated that it would provide a limited period after the filing of short-form applications in the digital companion channel filing window for applicants to utilize engineering solutions and settlements to resolve conflicts among their applications. The precise period for this settlement opportunity will be specified in a later public notice.

E. Noncommercial Educational Facility Election

8. Section 309(j)(2)(C) of the statutory exemption from competitive bidding of applications for construction permits for noncommercial educational broadcast stations (NCE stations) applies to an engineering proposal for a digital companion channel filed by a LPTV, TV translator or Class A TV broadcast station that is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes. The Commission held previously that proposals for NCE stations may be submitted for non-reserved spectrum in a filing window, subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station. Accordingly, in the short-form application (FCC Form 175), applicants will have an opportunity to designate their status as an NCE station application. No applicant will be allowed to change its NCE election after the application filing deadline.

F. Rules and Disclaimers

i. Prohibition of Collusion

9. The Commission's part 1 and part 73 rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii). Thus, pursuant to 47 CFR 1.2105(c) and 73.502(d), competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect, bidding or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

10. In Auction No. 85, the rule would apply to applicants filing applications in the digital companion channel window with engineering proposals that are mutually exclusive. Even if applicants submit only one engineering proposal each that is mutually exclusive, they may not discuss with each other their bids or bidding strategies relating to any engineering proposal submitted by either applicant during the digital companion channel window.

11. For purposes of this prohibition, section 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

12. Applicants in the digital companion channel window with engineering proposals that are mutually exclusive must not communicate indirectly about bids or bidding strategy. Such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants that the authorized bidder is authorized to represent in the auction.

Also, if the authorized bidders are different individuals employed by the same organization a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as, an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Bidders should use caution in their dealings with other parties, such as, members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

13. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with other applicants for engineering proposals that are mutually exclusive after the short-form filing deadline.

14. By electronically submitting its short-form application, each applicant certifies its compliance with sections 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

15. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws. Compliance with the disclosure requirements of the Commission's anti-collusion rules will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the Federal antitrust laws the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

16. An applicant is required by 47 CFR 1.65 to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Applicants are therefore required by section 1.65 to make such notification to the Commission immediately upon discovery. In addition, section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

17. Any report of a communication pursuant to sections 1.65 or 1.2105(c)(6) must be submitted by electronic mail to the following address: *auction85@fcc.gov.* The electronic mail report must include a subject or caption referring to Auction No. 85 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe®. Acrobat® (pdf) or Microsoft® Word documents.

18. Applicants that are winning bidders will be required by 47 CFR 1.2107(d) to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and agreements or other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

19. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment C of the *Auction No. 85 Filing Window Public Notice* and these documents are available on the Commission's auction anti-collusion Web page at *http://wireless.fcc.gov/auctions/anticollusion.*

ii. Due Diligence

20. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities they are seeking in this application filing window. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

21. Applicants are strongly encouraged to conduct their own research prior to filing in the window in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the window. Participants in the digital companion channel window are strongly encouraged to continue such research throughout the auction. In addition, applicants should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific

construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

22. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the digital companion channel facilities they are seeking. Resolution of such matters could have an impact on the availability of their specified channel. Some pending applications, informal objections, petitions or other requests for Commission relief may not be resolved by the time of the window.

23. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to obtain their specified channel. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to file, and also to familiarize themselves with the environmental assessment obligations.

24. Applicants in this window should note that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Applicants should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities they are seeking in this window.

25. Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at: *http://www.fcc.gov/mb/*.

26. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

G. National Environmental Policy Act Requirements

27. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a Federal action and, for each such facility, the permittee must comply with the Commission's NEPA rules, including 47 CFR 1.1305—1.1319. The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities. The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

II. Pre-Auction Procedures

A. Auction Seminar—June 12, 2006

28. On Monday, June 12, 2006, the Bureaus will sponsor a seminar for parties interested in participating in the filing window for Auction No. 85 at the Federal Communications Commission headquarters, located at 445 12th Street SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, service and auction rules, and specific information on the procedures for filing the short-form applications and associated technical data.

29. To register, complete the registration form provided as Attachment A of the *Auction No. 85 Filing Window Public Notice* and submit it by Thursday, June 8, 2006. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge. For individuals who are unable to attend, an Audio/Video of this seminar will be available via Webcast from the FCC's Auction 85 Web page.

B. General Filing Requirements

30. Applicants for LPTV and TV Translator digital companion channels must file a short-form application and the engineering data from FCC Forms 346 or 301–CA. Such information is required so that the staff can make mutual exclusivity determinations. A comprehensive review of applicants' technical proposals will be undertaken by the staff only following the submission of long-form applications by winning bidders post-auction, or by applicants identified as non-mutually exclusive, and by applicants resolving application mutual exclusivity during the established settlement period.

C. Short-Form Application (FCC Form 175)—Due Before 6 p.m. ET on June 30, 2006

31. All applicants must submit a short-form application and associated technical data electronically via the FCC Auction System. This application must be submitted electronically. Applications may be filed any time beginning at 9 a.m. Eastern Time (ET) on June 19, 2006, but must be received at the Commission prior to 6 p.m. ET on June 30, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on June 30, 2006. Late applications will not be accepted.

32. Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Applicants must submit required information as entries in the data fields of the electronic FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the electronic FCC Form 175. Applicants must always click on the SUBMIT button on the Certify and Submit screen of the electronic form to successfully submit their FCC Forms 175 or modifications. Any form that is not submitted will not be viewed by the FCC.

D. Application Processing

33. After the close of the window, the Commission will make mutual exclusivity determinations with regard to all timely and complete filings. Applications received during the filing window that are not mutually exclusive with any other applications submitted in the filing window will be identified by subsequent public notice.

34. The Bureaus will issue a public notice identifying mutually exclusive applications received during the window. That public notice also will specify a settlement period for resolving engineering proposal mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlements for eligible applicants. Mutually exclusive applicants may communicate with each other for the purpose of resolving conflicts only during the settlement period that will be specified in that forthcoming public notice.

35. Technical amendments submitted by applicants to resolve conflicts must be minor, as defined by the applicable rules of the service, and must not create any new mutual exclusivity or other application conflict. An applicant may only file a technical amendment during the settlement period specified by public notice

36. Commercial applications that remain mutually exclusive after the settlement period closes will proceed to auction. The Bureaus will then issue a public notice identifying the auction date and seek comment on procedures for further processing of the remaining mutually exclusive short-form applications.

III. Short-Form Application Requirements

37. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or construction permits. For Auction No. 85, if an applicant claims eligibility for a bidding credit, the information provided in its short-form application will be used in determining whether the applicant is eligible for the claimed bidding credit. Entities seeking construction permits available in Auction No. 85 must follow the procedures prescribed in Attachment B of the *Auction No. 85 Filing Window Public Notice.* Applicants bear full responsibility for submission of accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions specified in the *Auction No. 85 Filing Window Public Notice* and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules is included within their short-form applications.

38. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

39. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Engineering Proposals

40. In addition to submitting the short-form application, applicants must submit technical data from FCC Forms 301–CA or 346. Applicants will be required to submit the following information: (1) A description of the engineering proposal and its service type; (2) The engineering proposal purpose (always Digital Companion Channel for this auction); (3) Information identifying the existing facility, including Facility ID and Call Sign; (4) General information about this facility, including antenna location coordinates and technical specifications; (5) The antenna type (nondirectional, directional off-the-shelf, or directional composite); manufacturer and model; electrical beam tilt; and, for a directional antenna, rotation.

41. For directional composite antenna types, the applicant must also specify relative field values for azimuths 0 to 350 degrees (in increments of 10 degrees). Up to five additional field values may be provided. Additional instructions on submitting the technical data portion of the short-form application are provided in the *Auction No. 85 Filing Window Public Notice.*

B. New Entrant Bidding Credit

42. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications shall be considered when determining an auction applicant's eligibility for the New Entrant Bidding Credit. The applicant's attributable interests shall be determined as of the short-form application filing deadline, June 30, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Any applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline, June 30, 2006. Prospective applicants are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

43. Under traditional broadcast attribution rules, such as, 47 CFR 74.3555 and its Note 2, those entities or individuals with an attributable interest in an applicant include: (1) All officers and directors of a corporate applicant; (2) Any owner of 5 percent or more of the voting stock of a corporate applicant; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated. Further, any applicant asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit.

44. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the applicant. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.

45. Applicants also are reminded that attributable interests include the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that auction applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

46. A medium of mass communications is defined in 47 CFR 73.5008(b). Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. Full service noncommercial educational stations, on both reserved and non-reserved channels, are included within the definition of media of mass communications. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the winning bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.

C. Application Requirements

47. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section.

i. Bidding Credits

48. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

ii. Unjust Enrichment

49. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

D. Consortia and Joint Bidding Arrangements

50. Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. Applicants also will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants with mutually exclusive engineering proposals after the application filing deadline.

51. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants with mutually exclusive engineering proposals provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas included, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

E. Ownership Disclosure Requirements

52. The Commission specified in the *Broadcast Competitive Bidding First Report and Order,* 63 FR 48615, September 11, 1998, that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply. Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short-form application are prescribed in sections 1.2105 and 1.2112. Affiliates and controlling interests are defined at 47 CFR 1.2110. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

F. Provisions Regarding Former and Current Defaulters

53. Each applicant in Auction No. 85 must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, or any affiliate of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, as of the filing deadline for applications to participate in a specific auction, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

54. Former defaulters—i.e., applicants, including any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 85, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

55. In contrast, an applicant is not eligible to participate in competitive bidding in Auction No. 85 if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction.

56. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Further information is provided in the *Auction No. 85 Filing Window Public Notice.*

57. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. Prospective applicants in Auction No. 85 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Further, applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

58. The Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of any auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule may ultimately prevent the processing of long-form applications filed by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or its upfront payment obligation.

G. Other Information

59. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

H. Minor Modifications to Short-Form Applications

60. Following the deadline for filing short-form applications on June 30, 2006, applicants in Auction No. 85 are permitted to make only minor changes to their applications. Pursuant to 47 CFR 1.2105, applicants are not permitted to make major modifications to their applications. Examples of major modifications include, but are not limited to, a major change to an applicant's engineering proposal, a change in control of the applicant, or an increase of a previously-claimed bidding credit. No applicant will be allowed to change its noncommercial educational (NCE) election after the application filing deadline on June 30, 2006.

61. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

62. An applicant must make permissible minor changes to its short-form application, as defined by § 1.2105(b), on-line. Applicants must click on the SUBMIT button in the FCC Auction System for the change to be submitted and considered by the Commission.

63. In the event that changes cannot be made immediately in the FCC Auction System for any reason, an applicant must submit a letter, briefly summarizing the changes and subsequently update their short-form applications in the FCC Auction System as soon as possible. Any letter describing changes to applicant's short-form application must be submitted by electronic mail to the following address: *auction85@fcc.gov.*

I. Maintaining the Accuracy of Short-Form Application Information

64. Each applicant, pursuant to 47 CFR 1.65, must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's notification.

65. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application. Applicants must report section 1.65 modifications to their short-form application by electronic mail and submit a letter briefly summarizing the changes to the following address: *auction85@fcc.gov.*

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6–9071 Filed 6–13–06; 8:45 am]

BILLING CODE 6712–01–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 part 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

A C H Freight Forwarding Inc., 41–10A Main Street, 2nd Floor, Flushing, NY 11354. Officers: Li Zhao, Vice President (Qualifying Individual), Jimin Zhou, President.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Freightsolutions LLC dba Santa Cruz Ocean dba Freight Solutions, 1775 NW 70th Avenue, Suite 10, Miami, FL 33126. Officers: Fernando Santa Cruz, President (Qualifying Individual), Mayelin Santa Cruz, Vice President.

Ariel Cargo Export, Inc., 8252 NW 68 Street, Miami, FL 33166. Officers: Julio C. Ullauri, President (Qualifying Individual), Rosa E. Ullauri, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant.

Integrated Logistics 2000, LLC dba IL2000, 4007 Atlantic Avenue, Suite 101, Virginia Beach, VA 23451. Officer: Kraig Cesar, CEO (Qualifying Individual).

Dated: June 9, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–9274 Filed 6–13–06; 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 June 28, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Daniel L. Preston, Clarksburg, Ohio, individually and part of a group acting in concert with Jack F. Alkire, Washington Court House, Ohio; John R. Bryan, New Holland, Ohio; Richard W. Kirkpatrick, New Holland, Ohio; Michael E. Putnam, Clarksburg, Ohio, and David Kohli, Mt. Sterling, Ohio; to acquire voting shares of Community First Financial Bancorp, Inc., New Holland, Ohio, and thereby indirectly acquire voting shares of The First National Bank of New Holland, New Holland, Ohio.

Board of Governors of the Federal Reserve System, June 9, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–9334 Filed 6–13–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 2006.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. East Penn Financial Corporation, Emmaus, Pennsylvania; to acquire up to 19.9 percent of the voting shares of, and thereby merge with Berkshire Bancorp, Inc., Wyomissing, Pennsylvania, and thereby indirectly acquire voting shares of Berkshire Bank, Wyomissing, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Crescent Financial Corporation, Cary, North Carolina; to acquire 100 percent of the voting shares of Port City Capital Bank, Wilmington, North Carolina.

Board of Governors of the Federal Reserve System, June 9, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–9285 Filed 6–13–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Westfalisch–Lippischer Sparkassen–und Giroverband, Munster, Germany and Rheinischer Sparkassen-und Giroverband, Dusseldorf, Germany; to retain voting shares of WestLB Securities Inc., New York, New York; WestLB Mellon Asset Management (USA), LLC, Chicago, Illinois; S.A.L.E. (USA) Corporation, Reno, Nevada; NY Credit Real Estate GP LLC, New York, New York; New York Credit Real Estate Fund, L.P., New York, New York; New York Credit Advisors LLC, New York, New York; BOA Lending L.L.P., Las Vegas, Nevada; HSH N Financial Securities LLC, New York, New York; and WestAM Asset Management (US) LLC, Houston, Texas, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1); asset–management, servicing and collection activities, pursuant to section 225.28(b)(2)(vi); leasing personal or real property, pursuant to section 225.28(b)(3); investment advisory services, pursuant to section 225.28(b)(6)(i); financial and investment advisory activities, pursuant to section 225.28(b)(6)(iii); securities brokerage services, pursuant to section 225.28(b)(7)(i); riskless principal transactions, pursuant to section 22.28(b)(7)(ii); private placement services, pursuant to section 225.28(b)(7)(iii); and other transactional services, pursuant to section 225.28(b)(7)(v), all of Regulation Y.

Board of Governors of the Federal Reserve System, June 9, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–9284 Filed 6–13–06; 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 be 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.

TRANSACTIONS GRANTED EARLY TERMINATION, 05/01/2006–06/02/2006

Transaction No.	Acquiring	Acquired	Entities
20060903	Macquarie Bank Limited	Jimmy L. Allen	Alabama River Parkway, LLC. Black Warrior Parkway, LLC. Emerald Mountain Expressway Bridge, LLC. Toll Operations, LLC.
20060980	Wayzata Opportunities Fund, LLC	Anchor Glass Container Corporation	Anchor Glass Container Corporation.
20060992	The Fourth Viscount of Rothermere	OCM/GFI Fund I	Genscape, Inc.
20060993	Audax Private Equity Fund II, L.P	Linda Burdman Fine	CIBT Holdings, Inc.
Transactions Granted Early Termination, 05/02/2006			
20060977	Danaher Corporation	Sybron Dental Specialties Inc	Sybron Dental Specialties Inc.
Transactions Granted Early Termination, 05/04/2006			
20060973	Amdocs Limited	Qpass Inc	Qpass Inc.
20061005	Square Holdings S.A.	Mr. Hein Deprez	De Weide Bilk N.V.
Transactions Granted Early Termination, 05/08/2006			
20060697	Coherent, Inc	Excel Technology, Inc	Excel Technology, Inc.
20060932	Mitchell Jacobson	Kennametal Inc	J&L America, Inc.
20060961	American Capital Strategies, Ltd	Avery Weigh-Tronix Holdings, Inc	Avery Weight-Tronix Holdings Limited.
20060969	Audax Private Equity Fund II, L.P	The Michael R. Shaughnessy Living Trust dtd August 31, 2000.	The ColorMatrix Corporation.
20060970	Audax Private Equity Fund II, L.P	The John C. Haugh Living Trust dated Augst 18, 2000.	The ColorMatrix Corporation.
20060983	TCV IV, L.P	Redback Networks Inc	Redback Networks Inc.
20061000	Level 3 Communications, Inc	MCCC ICG Holdings, LLC	ICG Communications, Inc.
20061003	Forstmann Little & Co. Equity Partnership VII, L.P.	Elyse N. Kroll	ENK Productions, Ltd.
20061010	EQT IV No. 1 LP	Compass Group PLC	Compass Group PLC.
20061016	Apache Corporation	BP p.l.c	BP America Production Company.

TRANSACTIONS GRANTED EARLY TERMINATION, 05/01/2006–06/02/2006—Continued

Transaction No.	Acquiring	Acquired	Entities
20061019	Oracle Corporation	Portal Software, Inc	Portal Software, Inc.
Transactions Granted Early Termination, 05/09/2006			
20061024	The Bank of New York Company, Inc.	JPMorgan Chase & Co	J.P. Morgan Trust Australia Limited.
Transactions Granted by Early Termination, 05/10/2006			
20060759	KLA—Tencor Corporation	ADE Corporation.	ADE Corporation. Corus Aluminium Corp. Corus Aluminium GmbH. Corus Aluminium Inc. Corus Aluminium NV. Corus Aluminium Rolled Products BV. Corus Hylite BV. Corus LP. Hoogovens Aluminium Europe Inc.
20061038	Sprint Nextel Corporation	UbiquiTel Inc	UbiquiTel Inc.
Transactions Granted by Early Termination, 05/11/2006			
20061015	Pfizer Inc	Rinat Neuroscience Corp	Rinat Neuroscience Corp.
Transactions Granted by Early Termination, 05/12/2006			
20060971	Activision Incorporated	Red Octane, Inc	Red Octane, Inc.
20060979	BDCM Opportunity Fund, L.P	Bayou Steel Corporation	Bayou Steel Corporation.
20060996	E.C. Barton & Company Employee Stock Ownership Trust.	JELD-WEN HOLDING, inc	JELD-WEN, inc.
20061042	Senior Care Real Estate Investment Trust.	Lillian Trust, c/o RBC Trustees (Guernsey) Limited.	Balanced Care Corporation PC (MT) Holdco, Inc. United Rehab MLC Holding, LLC.
20061045	AMVESCAP PLC	PowerShares Capital Management LLC.	PowerShares Capital Management LLC.
20061070	FIF III Liberty Holdings LLC	Heritage Fund III, L.P	Enterprise NewsMedia Holding, LLC Heritage Partners Media, Inc.
Transactions Granted Early Termination, 05/15/2006			
20060926	Highfields Capital Ltd	Pioneer Natural Resources Company	Pioneer Natural Resources Company.
20060928	Highfields Capital II LP	Pioneer Natural Resources Company	Pioneer Natural Resources Company.
20060988	UBS AG	Piper Jaffray Companies	Piper Jaffray & Co.
20060989	FPI Holding Corporation	American Capital Strategies, Ltd	Fruit Patch Sales LLC.
20061051	Wachovia Corporation	Ameriprise Financial, Inc	Ameriprise Trust Company.
20061058	Joseph C. Grendys	Sylvest Farms, Inc.	Sylvest Farms, Inc. Sylvest Farms Management Services, Inc. Sylvest Foods Corporation.
20061066	Applied Materials, Inc.	Applied Films Corporation	Applied Films Corporation.
Transactions Granted Early Termination, 05/16/2006			
20060960	Antonia Johnson	William C. Prior	Kinetico Incorporated.
20060975	Office Depot, Inc.	New AOS Acquisition Corp	New AOS Acquisition Corp.
20061007	Covance Inc.	Radiant Research Inc	Radiant Research Inc.
20061054	Green Mountain coffee Roasters, Inc	Memorial Drive Trust	Keurig, Incorporated.
Transactions Granted Early Termination, 05/17/2006			
20061046	Macquarie Infrastructure Company Trust.	CapStreet II, L.P	Trajen Holdings, Inc.
20061050	Societe Lorraine de Participations Siderurgiques SLPS, S.A.	Carl Deutsch	Deutsch Engineering Connecting Devices.
20061068	Lightyear Fund II, L.P	White Mountains Insurance Group, Ltd.	Sirius America Insurance Company.
Transactions Granted Early Termination, 05/18/2006			
20061067	International Power plc	Sempra Energy	Coleto Creek Power, LP.

TRANSACTIONS GRANTED EARLY TERMINATION, 05/01/2006–06/02/2006—Continued

Transaction No.	Acquiring	Acquired	Entities
20061095	Lake Capital Partners II LP	Jeff Haggin	Haggin Marketing, Inc.
Transactions Granted Early Termination, 05/22/2006			
20051684	Precision Castparts Corp	Special Metals Corporation	Special Metals Corporation.
20061001	ICAP Plc	EBS Group Limited	EBS Group Limited.
20061041	K+S Aktiengesellschaft	Prospecta Minera Ltda	Sociedad Punta del Lobos S.A.
20061056	StanCorp Financial Group, Inc.	Invesmart, Inc	Invesmart, Inc.
20061069	TCV IV, L.P.	Netflix, Inc	Netflix, Inc.
20061071	H.I.G. Bayside Opportunity Fund, L.P	EYAS International, Inc	Easy Gardener Products, Ltd Weatherly Consumer Products Group, Inc. Weatherly Consumer Products , Inc.
20061072	Weston Presidio V, L.P	Charterhouse Equity Partners III, L.P	Cellu Paper Holdings, Inc.
20061074	FPC Holdings, Inc	Aurora Equity Partners II, L.P	FleetPride Corporation.
20061075	JDA Software Group, Inc	Manugistics Group, Inc	Manugistics Group, Inc.
20061076	Zensho Co., Ltd	Catalina Restaurant Group Inc	Catalina Restaurant Group Inc.
20061077	Wizard Parent LLC	NetIQ Corporation	NetIQ Corporation.
20061081	Citigroup Inc	Western Dental Services, Inc	Western Dental Services, Inc.
20061084	FIF III Liberty Holdings LLC	MVVT, LLC	CP Media, Inc.
20061087	Mead Westvaco Corporation	Compagnie de Saint-Gobain	Saint-Gobain Calmar Brasil Ltda. Saint-Gobain Calmar, Inc. Saint-Gobain Calmar Microspray S.r.l. Saint-Gobain Calmar, S.A. Saint-Gobain Calmar Corporation Saint-Gobain Delaware Corporation Saint-Gobain Desjonqueres North America, Inc. Saint-Gobain Kipfenberg GmbH Saint-Gobain La Granja S.A. Saint-Gobain Sekurit Mexico S.A. de C.V. Saint-Gobain Vetri S.p.A. Saint-Gobain Vidros S.A.
20061090	Area Corporate Opportunities Fund II, L.P.	Aspen Dental Management, Inc	Aspen Dental Management, Inc.
20061093	Devon Energy Corporation	Trevor D. Rees-Jones	Chief Holdings LLC
20061094	GTCR Fund VIII, L.P	Olympus Growth Fund III, L.P	GLL Holdinghs, Inc.
20061098	Merrill Lynch & Co., Inc	PODS, Inc	PODS, Inc.
20061105	Newco	Mars, Incorporated	Mars, Incorporated.
Transaction Granted Early Termination, 05/23/2006			
20061049	Reynolds American Inc	Asworth Corporation	New Asworth Corporation.
20061099	Mrs, Incorporated	Doane Pet Care Enterprise, Inc	Doane Pet Care Enterprises, Inc.
20061103	Pan Fish ASA	Nutreco Holding N.V.	Marine Harvest N.V.
Transaction Granted Early Termination, 05/24/2006			
20060896	L–3 Communications Holdings Inc	Parthenon Investors, L.P	SSG Precision Optronics, Inc.
20061014	Hologic, Inc	R2 Technology, Inc	R2 Technology, Inc.
20061107	Bourns, Inc	David S. Baum	SSI Technologies, Inc.
Transaction Granted Early Termination, 05/26/2006			
20061035	Millipore Corporation	Serologicals Corporation	Serologicals Corporation.
20061108	Avocent Corporation	LANDesk Group Limited	LANDesk Group Limited.
20061109	NICE-Systems Ltd.	Tekelec	IEX Corporation.
20061111	United Site Services Holdings, Inc	Odyssey. Investment Partners Fund, L.P.	United Site Services, Inc.
20061112	Harbinger Capital Partners Offshore Fund 1, Ltd..	WCI Steel, Inc	WCI Steel, Inc.
20061114	Continental AG	Motorola, Inc	Motorola. (China) Electronics Ltd. Motorola GmbH Motorola Ltd. Motorola S.A.S.
20061115	Berkshire Hathaway Inc	Wertheimer Company Ltd.	IMC International Metalworking Companies R.V.
20061119	Castle Harlan Partners IV, L.P	Willis Stein & Partners III, L.P	Baker & Taylor Acquisition Corp.
20061121	Lerner Enterprises, LLC	Baseball Expos, L.P	Baseball Expos, L.P.

TRANSACTIONS GRANTED EARLY TERMINATION, 05/01/2006–06/02/2006—Continued

Transaction No.	Acquiring	Acquired	Entities
20061123	Linden Capital Partners LP	The Children's Memorial Medical Center.	Focused Health Solutions Holdings, Inc.
20061128	GS Capital Partners V, L.P	J. Douglas Williams	iHealth Technologies, Inc.
20061138	The Hearst Family Trust	Jeffrey H. Smulyan	Emmis Television Broadcasting, L.P.
20061140	NF Acquisition Corporation	Olympus Growth Fund III, L.P	Staffco Holdings, Inc.
20061142	Thomas H. Lee Equity Fund VI, L.P	Midwest Renewables LC	Hawkeye Intermediate, LLC.
20061144	Mellon Financial Corporation	Dr. Walter Grant Scot	Walter Scott & Partners Limited.
20061145	OnLine Resources Corporation	Princeton eCom Corporation	Princeton eCom Corporation.
Transaction Granted Early Termination, 05/30/2006			
20061013	Trian Star Trust	Wendy's International, Inc	Wendy's International, Inc.
20061053	Cardinal Health, Inc	The F. Dohmen Co.	Anoka LLC Dohmen Distribution Partners Dohmen Distribution Partners Southeast L.L.C.
20061092	Iconix Brand Group, Inc	Mossimo Giannulli	Mossimo Inc.
20061101	Crosstex Energy, Inc	Trevor D. Rees-Jones	Chief Midstream Holdings LLC.
20061152	U.S. TelePacific Holdings Corp.	Mpower Holding Corporation	Mpower Holding Corporation.
Transaction Granted Early Termination, 05/31/2006			
20061146	CHS Private Equity V LP	Home Acres Building Supply Co.	Home Acres Building Supply Co.
Transaction Granted Early Termination, 06/01/2006			
20060573	GATX Corporation	Oglebay Norton Company	Olglebay Norton Marine Services Company, LLC.
20061064	Merck & Co., Inc	GlycoFi, Inc	GlycoFi, Inc.
Transaction Granted Early Termination, 06/02/2006			
20061124	Tom L. Ward	N. Malone Mitchell, 3rd	Riata Energy, Inc.
20061125	Level 3 Communications, Inc	TelCove, Inc	TelCove, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact 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. 06–5392 Filed 6–13–06; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Consolidation of the Two Existing NIOSH Facilities in Cincinnati, Ohio

AGENCY: Public Buildings Service, GSA

ACTION: Notice of Intent (NOI) to Prepare EIS

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500-1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed consolidation of the two existing NIOSH facilities, the Robert A. Taft Laboratory and the Alice Hamilton Laboratory buildings, into a single consolidated facility at a new location in Ohio.

SUPPLEMENTARY INFORMATION: The delineated area for this project is defined as follows; starting at Exit 54 on Interstate Highway I-275 northeast of Cincinnati; then running clockwise along a line approximately two miles east and parallel to Interstate Highway I-275 south to the Ohio River; then west along the Ohio River to a point where it intersects with Interstate Highway I-75; then north and northeast along Interstate Highway I-75 until it intersects with Ohio State Highway 126 at Exit 104; then east along Ohio State Highway 126 until it intersects with US Highway 22 (Montgomery Rd.); from this point east along a line back to Exit 54 on Interstate Highway 275.

The purpose of this proposed action is to consolidate these facilities, which have been occupied for the past 50 years and are outdated and inefficient, into a new consolidated facility. The need for this action is for NIOSH to collocate operational functions into a single location to eliminate the inherent inefficiencies associated with the current separated and outdated facilities.

The EIS will examine the impacts of this proposed development on the natural and human environment to include impacts to wetlands, floodplains, traffic, historic resources, and other potential impacts identified by the community through the scoping process.

The consolidated facility will be acquired by the Government, and may be an existing facility, or may be property acquired for the construction of a new facility. GSA, as agent for CDC, will develop a list of alternate site locations based on the criteria for the project. The site and must be large enough to accommodate the needed 350,000 square feet of usable space with 1100 employees. The minimum site size needed will by approximately 14 acres. The technical site evaluation criteria are:

GENERAL

• The property owner(s) must have sole, legally documented authority to represent the property or facility or assemblage for the Government's consideration. No speculative offers will be considered.

• The site must be within an approximately 25 minute or 30 mile distance from the Cincinnati airport.

• The site must have reasonably direct access from the Interstate(s) or other major roadway arteries.

• The site must be proximate to existing support services such as restaurants/ eateries, hotels/ motels or other approved retail and/or commercial uses to support the Government's workforce.

• Existing facilities must comply with, or must be capable of being upgraded to, the most current versions of the Unified Facilities Criteria (UFC), the Department of Defense (DoD) Minimum Anti-terrorism Standards for Buildings and the ISC Security Design Criteria for Federal Buildings with CDC project specific planning criteria, to be considered.

• Only property within the State of Ohio will be considered.

SITE

• The site must encompass a minimum of 14 developable acres with the following characteristics:

• No deed restrictions or encumbrances that may potentially restrict the Government's use of the developable portion(s) of the site.

• Soil type and subsurface conditions suitable for low- and mid-rise development consistent with that described in the solicitation.

• Appropriate zoning or other land use control designation that would allow research/office uses as specified in the Government's solicitation.

• The site must be contiguous.

• Preference shall be given to sites that have favorable configuration in shape and dimensions so as to afford the most flexibility for site planning for the proposed development.

• The site must be served by or proximate to basic utilities including, but not limited to, water, sanitary and storm sewer, natural gas, and electricity.

• The property owner(s) must either certify in writing that no environmental condition exists or is pending, as defined by Federal, State or local jurisdiction law, regulation or ordinance that would potentially restrict the Government's use of the site as stated in the NOI, or identify any such condition(s), if known. The Government would keep this information confidential to the extent allowed under Federal law.

• The property owner(s) must identify any Federal, State or locally documented historic, archaeological or cultural resources located on or immediately adjacent to the site, if known.

• The property owner(s) must provide a certified ALTA/ ACSM Boundary, Topographical and Utility (BTU) survey of the site, prepared by a qualified, licensed surveyor, that identifies the legal dimensions and boundaries of the site, all lakes, stream or other bodies of water, all major natural features of the site such as hills and ravines, public or private roads, power transmission, natural gas, electric distribution, or other utility lines below ground, on-grade, or suspended, and any-and-all other encumbrances to the site.

• The property owner(s) must identify any existing buildings or other improvements on the site, and if such improvements would be demolished by the Property owner(s) or the Government prior to development of the site; or if the Government is to evaluate the improvements for future NIOSH occupancy and use.

GSA will first identify sites that can meet these basic criterions for the project, and will then use the NEPA process analyze the impacts of the potential sites that have been screened down to a short list for final consideration. GSA will solicit community input throughout this process, and will incorporate community comments into the decision process before any decisions are made. As part of the Public Scoping process, GSA will solicit comments in writing through advertisements in the local newspapers and public meetings once potential sites have been identified. Comments will be directed to: Mr. Phil Youngberg, Environmental Manager (4PT), General Services Administration (GSA), 77 Forsyth Street, Suite 450, Atlanta, GA 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Youngberg via FAX: 404-562-0790, or Email: *phil.Youngberg@gsa.gov*.

Signed:
June 6, 2006.

Philip B. Youngberg,

Environmental Manager 4PHD

[FR Doc. E6–9251 Filed 6–13–06; 8:45 am]

BILLING CODE 6820–DN–S

GOVERNMENT ACCOUNTABILITY OFFICE

Financial Management and Assurance; Government Auditing Standards

AGENCY: Government Accountability Office.

ACTION: Notice of document availability.

SUMMARY: One June 9, 2006, the U.S. Government Accountability Office (GAO) issued an exposure draft of proposed revisions to *Government Auditing Standards* (GAGAS) (also known as the Yellow Book) (GAO–06–729g). To help ensure that the standards continue to meet the needs of the audit community and the public it serves, the Comptroller General of the United States appointed the Advisory Council on Government Auditing Standards to review the standards and recommend necessary changes. The Advisory Council includes experts in financial and performance auditing drawn from all levels of government, private enterprise, public accounting, and academia. This exposure draft of the standards includes the Advisory Council's suggestions for proposed changes. We are currently requesting public comments on the proposed revisions in the exposure draft.

The proposed 2006 revision to GAGAS will be the fifth revision since the standards were first issued in 1972. The 206 Yellow Book exposure draft seeks to emphasize the critical role of high quality government audits in achieving credibility and accountability in government. the overall focus of the proposed 2006 revised standards includes an increased emphasis on audit quality and ethics and an extensive update of the performance audit standards to include a specified level of assurance with the context of risk and materiality. In addition, this proposed revision modernizes GAGAS, with updates to reflect major developments in the accountability and audit environment. Clarifications have also been made throughout the standards.

DATES: Comments will be accepted through August 15, 2006.

ADDRESSES: A copy of the exposure draft can be obtained on the Internet on GAO's Home Page *http://www.gao.gov/govaud/ybk01.htm*.

FOR FURTHER INFORMATION CONTACT: Michael Hrapsky, Senior Project Manager, at (202) 512–9535 or Jeanette Franzel, Director, Financial Management and Assurance at (202) 512–9471.

SUPPLEMENTARY INFORMATION: To ensure that your comments are considered by GAO and the Advisory Council in their deliberations, please submit them by August 15, 2006. Please send your comments electronically to *http://yellowbook@gao.gov*.

[Public Law 67–13, 42 Stat. 20 (June 10, 1921)]

Jeanette Franzel,

Director, Financial Management and Assurance.

[FR Doc. 06–5393 Filed 6–13–06; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information: Development and Implementation of Electronic Benefits Transfer System for Victims of Disaster To Receive Federal and State Benefits

AGENCY: Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: HHS invites all comments, suggestions, recommendations and creative ideas on the feasibility of establishing a system of Electronic Benefits Transfer (EBT) as a simple, comprehensive, and efficient means to deliver to disaster victims the Federal, State and local human services for which they qualify. This Request for Information (RFI) is intended to provide ideas for consideration, and may or may not result in a future procurement.

DATES: Responses should be submitted to the Department of Health and Human Services (HHS) on or before 5 p.m., EDT, August 14, 2006.

ADDRESSES: Electronic responses are preferred and should submitted at: *http://www.hhs.gov/emergency/rfi/.* Please click on ''E-mail comments now.'' Written comments will also be accepted. Please send to: Department of Health and Human Services, Room 404E, 200 Independence Ave, SW., Washington, DC 20201, Attention: DES RFI Response.

Public Access: This RFI and all responses will be made available to the public in the HHS Public Reading Room, 200 Independence Avenue, SW., Washington, DC. Please call 202–690–7453 between 9 a.m. and 5 p.m. EDT, Monday through Friday, except Federal holidays, to arrange access to the Public Reading Room. The RFI and all responses will also be made available on the World Wide Web at *http://www.hhs.gov/emergency/rfi.* Any information you submit, including addresses, phone numbers, e-mail addresses, and personally identifiable information, will be made public. Do not send proprietary, commercial, financial, business confidential, trade secret or personal information that should not be made public.

SUPPLEMENTARY INFORMATION: During the summer months of 2005, Hurricanes Katrina and Rita dramatically impacted the lives of over four million people across nearly 93,000 square miles of the Gulf Coast region. The hurricanes and subsequent flooding resulted in the evacuation of New Orleans, marking the first time a major American city has been completely evacuated. Beginning with landfall on August 29, hundreds of thousands of individuals had immediate needs for food, housing, medical care, and other critical health and human services. Due to the conditions immediately following the hurricanes, however, many of these individuals lacked the ability or resources necessary to access in a timely and efficient manner much needed local, State and Federal benefit programs and services that were available to them.

To rectify this, the White House detailed recommendations in The Federal Response to Hurricane Katrina: Lessons Learned to refine the disaster readiness and response capabilities of nearly all Federal agencies. For one task in particular, the Department of Health and Human Services was assigned to improve the delivery of assistance to disaster victims by developing a simple, comprehensive and efficient system designed to maximize the ease of health and human services benefit delivery. The system would also have safeguards against fraud and it could be used to help track movements of displaced victims.

To do so, HHS is soliciting information regarding approaches for establishing a system by which victims of disasters can access multiple benefits and services in a secure and confidential way through magnetic stripe cards, smart cards, biometrics, or other innovative methods. HHS is interested in the views and recommendations of individuals and organizations on the best way to develop this capability, with particular regard to receiving information on the creation of systems that incorporate magnetic stripe cards, smart cards, biometrics, and other innovative tools or software to streamline benefits delivery. HHS encourages all potentially interested parties—individuals, consumer groups, associations, governments, non-governmental organizations, and commercial entities—to respond. To facilitate review of the responses we ask respondents to reference the question number with their response.

The purpose of this request for information is to elicit comments and ideas on how to deliver to victims of disaster streamlined access to Federal, State and local health and human services benefits and services for which they qualify.

Questions for Response

1. Current Programs

a. What are the key features of Federal-, State-, and locally-implemented variations of EBT systems already in place?

i. What types of EBT tools are being used (*e.g.*, magnetic stripe cards, smart cards, electronic funds transfers, biometrics, or other innovative methods)?

ii. What types of benefits are being provided through these systems (*e.g.*, income support, medical care, food and nutrition, social insurance, education, child care, loans, unemployment compensation, and housing assistance)?

iii What information about individuals accessing services could be obtained through the EBT tool (*e.g.* name, address)?

b. How are these systems managed?

i. How could an emergency EBT system interface with existing state systems?

ii. What governance structure is appropriate for this system?

iii. Who are the interested parties?

iv. How should interested parties interact? What are their roles and responsibilities?

v. What internal controls should be in place to monitor program abuses and minimize program fraud?

c. What previous efforts have been made at the Federal, State or local government levels to consolidate the delivery of multiple benefits and services, and what was learned from those experiences?

2. Feasibility of Emergency EBT System

a. How would it be possible for individuals who are victims of disasters to receive benefits from multiple programs at a single relief facility?

b. What benefits—Federal, State and local—could be included? How could a person get access to services that are not direct cash benefits (*e.g.*, education, medical care, mental health services or child care)?

c. How could the system be used for short-term benefits immediately following a disaster?

d. What are the training and staffing requirements for implementation of a multiple program EBT delivery system for victims of disasters?

e. What regional differences or state-specific differences in EBT systems are there that need to be factored in? How would questions of system interoperability or differences in state benefit systems be addressed?

f. How should an EBT system for the delivery of multiple program benefits and services be developed and financed?

i. What resources—financial and infrastructure related—would be required? What would be the most expensive elements of such an EBT system?

ii. What would be the estimated cost of developing and implementing an EBT system for cross-cutting human services programs?

iii. How should such a service delivery system be sustained in future years in terms of cost sharing?

g. What should be available, that is currently not available, to provide an efficient delivery system?

h. What ownership issues, if any, arise from the model system you propose? How should these be resolved?

3. Design Requirements

a. What technical standards should be used? What are appropriate technical performance standards? What industry standards are currently in place?

b. What transaction interfaces should be assumed?

c. What platforms now exist? How could these existing platforms be made compatible with existing point of service systems?

d. How could this benefit system be created from existing benefit structures, *e.g.*, an aggregation of existing Federal, State, and locally-administered benefit and services programs? What are the advantages and disadvantages of such an approach?

e. What is the potential for interoperability with existing Federal, State and local electronic benefit and service delivery systems where these exist?

f. What types of information are relevant, necessary, or useful to ensuring benefits are delivered quickly to eligible victims?

g. What approaches would you recommend for monitoring the utilization of benefits by displaced victims to ensure they continue to receive benefits to which they are entitled?

h. What back-up or contingency plans can be implemented if there is no electricity or if the system fails? What contingency plans are in place with existing systems?

i. Across multiple programs, particular benefits and services may run out (*i.e.* an individual's eligibility for particular benefits may be time limited). How would this be handled?

j. What is the universe of benefits that could be included in such a system?

4. Security and Enforcement

a. What administrative, technical, and physical security approaches should used?

b. What enforcement mechanisms would be appropriate to ensure against fraud?

c. How would an EBT operator ensure that benefits and services were actually provided to the right individuals without incurring costly and labor intensive verification procedures?

i. What safeguards could be incorporated to prevent fraud?

ii. How could the delivery mechanism be invalidated if stolen, lost, or otherwise compromised?

iii. What measures could be put in place to avoid duplicate participation or overpayment?

d. How can HHS ensure that it does not pay for services rendered to an unauthorized person or for services that are not authorized?

e. Who should be responsible for enforcing the rules associated with use of the EBT system?

f. What legal requirements for privacy or confidentiality would apply to the information to be collected for benefit programs, and how should they be addressed in the system?

g. What other privacy considerations should be incorporated into system design and implementation?

5. EBT Delivery Requirements

a. How can benefits be made available to those they are intended to help as quickly as they would be needed?

i. How could benefits be made available that do not depend on whether victims move to other states after being displaced from their homes? If that is not possible, how could displaced victims access their benefits if they have moved to other states?

ii. Who do the benefit programs, or other law, authorize to act on behalf of other individuals (beneficiaries), *e.g.,* legal guardians, etc? Are there other persons who should be so authorized? How may such authority be established?

iii. Can organizations (*e.g.,* HHS grantee sites) receive EBT benefits on behalf of eligible individuals?

b. What rights and responsibilities should individuals have with respect to getting and using benefits and services?

c. Are there legal impediments that a provider of services must comply with or overcome before implementing a benefits delivery system?

d. What should be the role of the Federal government in facilitating the development of this system?

e. Can benefits be provided at HHS grantee sites where individuals may initially receive services? What would be needed to equip HHS grantees with such capabilities?

f. If devices that beneficiaries need to carry (such as magnetic stripe cards or smart cards) are used, what are the options for the distribution of such EBT tools?

g. What type of case management—related to use of and problems with the EBT system—would be needed for individuals receiving benefits through such a system? What consumer education is needed for beneficiaries?

g. What rights and responsibilities should be assigned to those responsible for distributing and monitoring the use of the benefits?

h. What kind of training and public information program would be needed?

i. What technical support needs to be provided?

j. What provisions should there be for a help desk for providers and recipients and the replacement of lost or stolen cards/documentation or other help that might be needed?

6. EBT Pilot Testing

a. Who should be responsible for managing any pilot of the system?

b. Could an EBT system be installed and tested in medical, financial, and retail environments without disrupting current systems and operations?

c. What requirements are appropriate for a pilot program?

i. How long would it take to set up the pilot; how long should it run?

ii. What should be the scale of such a test?

iii What resources would be required? How much would it cost?

iv. What technical support would be required?

v. How should the pilot be evaluated?

Please feel free to add any other comments, suggestions or creative ideas to your response.

Issued on June 9, 2006.

Charles Havekost,

Deputy Assistant Secretary for Information Technology and Chief Information Officer.

[FR Doc. E6–9314 Filed 6–13–06; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program

AGENCY: Office of Minority Health, Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

Announcement Type: Competitive Initial Announcement of Availability of Funds.

Catalog of Federal Domestic Assistance Number: Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program—93.137.

DATES: *Application Availability Date:* June 14, 2006. *Application Deadline:* July 14, 2006.

SUMMARY: This announcement is made by the United States Department of Health and Human Services (HHS or Department), Office of Minority Health (OMH) located within the Office of Public Health and Science (OPHS), and working in a ''One-Department'' approach collaboratively with participating HHS agencies and programs (entities). The mission of the OMH is to improve the health of racial and ethnic minority populations through the development of policies and programs that address disparities and gaps. OMH serves as the focal point in the HHS for leadership, policy development and coordination, service demonstrations, information exchange, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. This announcement supports the Healthy People 2010 overarching goal to eliminate health disparities.

As part of a continuing HHS effort to improve the health and well being of racial and ethnic minorities, the Department announces availability of FY 2006 funding for the Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program. Despite significant improvements in the overall health status of the nation over the past decades, disparities in health status continue to persist among racial and ethnic minority and disadvantaged populations. Such disparities are clearly illustrated by health status statistics in southern areas of the United States. Mississippi serves as an important pilot location for the development of a geographic and minority health disparities model for the nation. Mississippi has a population of 2.8 million, 37 percent of whom are African American, and 51percent of whom live in rural areas. It is the fourth most rural state in the nation, and is ranked 31st in terms of population size. The significant disease burden of the state is well documented. It ranks first of all states and the District of Columbia in mortality rates due to cardiovascular disease (30 percent higher than the national average). In 1996, the cardiovascular disease-related death rate for African Americans in the state was 37 percent greater than for whites, and 60 percent greater than the overall national rate. Stroke mortality, the third leading cause of death in Mississippi, is 18 percent higher than the rate for the U.S. as a whole. It has the highest prevalence of diabetes and obesity in the nation; approximately 9 percent of the state's adult population are diabetic and 55 percent are obese. Mississippi ranks 5th highest overall in cancer mortality rates among the 50 states and the District of Columbia. African Americans make up more than 75 percent of the state's reported new AIDS cases. Premature death rates are almost 2 times greater for American Indians and 1.5 times greater for African Americans than whites. The infant mortality rate in a number of counties along the Mississippi Delta is three times that of the national average.

Mississippi has many challenges affecting access to medical care. Almost one-quarter of the state's population, aged 18 to 64, report having no health insurance; higher than the 15.7 percent of people nationally without health insurance in 2004, according to the U.S. Census. Other reasons for insufficient access include the state's ratio of medical doctors to its general population, which is about half the national average, and the large percentage of rural, sparsely-populated areas within the state. Access to health care and delivery of services to a sizeable population in Mississippi, already inadequate, have been further impacted by the devastation caused by last year's hurricanes. The Gulf Coast of Mississippi suffered massive damage from the impact of Hurricane Katrina on August 29, 2005, leaving 236 people dead, 67 missing, and an estimated $125 billion in damages. Mississippi's healthcare system has been seriously disrupted, resulting in new health problems for people living in affected areas. The grant will provide an opportunity to address these health problems and to aid in restructuring the healthcare system.

SUPPLEMENTARY INFORMATION:

Table of Contents

Section I. Funding Opportunity Description

Authority: This program is authorized under 42 U.S.C. 300u–6, section 1707 of the Public Health Service Act, as amended.

1. Purpose

The Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program is designed to address the many and significant health disparities faced by rural disadvantaged and minority populations throughout the state. This program is intended to demonstrate the effectiveness and efficiency of a targeted and multifaceted statewide approach for eliminating health disparities. The grant requires a multi-partner effort, involving institutions of higher education, state and local health agencies, faith and community-based organizations, healthcare organizations, and other stakeholders to tackle the state-wide challenge.

2. OMH Expectations

It is expected that the model will fill an existing void for addressing the significant and increasing disparities among the targeted populations and communities in Mississippi that will lead to:

Increased awareness by all populations of healthcare issues impacting rural disadvantaged and minority communities;

Increased access to quality healthcare for rural disadvantaged and minority populations;

Increased number of healthcare personnel available to provide services to rural disadvantaged and minority populations;

Improved health outcomes for rural disadvantaged and minority populations.

Over the long term, OMH intends to use the model developed under this project and variations of the model to address national policies and programs to improve the health of rural disadvantaged and minority communities.

3. Applicant Project Results

Applicants must identify anticipated project results that are consistent with the overall program purpose and OMH expectations. Project results should fall within the following general categories:

Mobilizing Communities and Partnerships
Increasing Knowledge and Awareness
Changing Behavior and Utilization
Increasing Access to Health Care Services
Policy Research
Changing Systems
Improving Data and Evaluation

4. Project Requirements

Each applicant under the proposed model program must propose to:

Establish the Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities to serve as a hub of state-wide activity, services and information on health disparities and the impact on Mississippi's racial, ethnic, and rural communities. Form partnerships with health professions schools, state and/or local health agencies, healthcare organizations, faith and community based organizations, and other stakeholders to build the research/science/knowledge base on health disparities and evidence-based practices; foster dialogue on public policy, research and health system issues; carry out community outreach and other public education/awareness activities; develop and disseminate culturally appropriate educational materials for healthcare providers and consumers; promote training of a culturally diverse healthcare workforce; train providers to deliver appropriate care to rural and minority communities; and address the use of technology to improve the quality of health systems and delivery of care. Develop, establish, and conduct programs, initiatives, and activities through four core components within the Institute: Research, Services, Education/Awareness, and Health Information.

Develop a cadre of researchers/investigators from historically black colleges and universities within the state.

Establish an advisory board to provide advice and guidance on program implementation, design, and direction.

A signed Memorandum of Agreement (MOA) between the applicant organization and each partner organization must be submitted with the application. Each MOA must clearly detail the roles and resources (including in-kind) that each entity will bring to the project; state the duration and terms of the agreement; cover the entire project period; and be signed by an individual with the authority to represent the organization.

Section II. Award Information

Estimated Funds Available for Competition: $5,000,000 in FY 2006.

Anticipated Number of Awards: 1.

Range of Awards: $5,000,000.

Anticipated Start Date: September 1, 2006.

Period of Performance: 3 Years (September 1, 2006 to August 31, 2009).

Budget Period Length: 12 months.

Type of Award: Grant.

Type of Application Accepted: New.

Section III. Eligibility Information

1. Eligible Applicants

To qualify for funding, an applicant must be located in the State of Mississippi and must be a:

(1) Health professions school or academic health center; or

(2) Private nonprofit community-based, minority-serving organization which addresses health or human services; or

(3) State or local government agency which addresses health or human services.

This competition is limited to the State of Mississippi.

Other entities that meet the definition of private non-profit community-based, minority-serving organization and the above criteria that are eligible to apply are:

Faith-based organizations.

Tribal governments and organizations.

The organization submitting the application will:

Serve as the lead agency for the project, responsible for its implementation and management; and

Serve as the fiscal agent for the Federal grant awarded.

2. Cost Sharing or Matching

Matching funds are not required for the Institute Program.

3. Other

This competition is limited to the State of Mississippi, based on its dire health care needs as described in the Summary. Additionally, due to last year's hurricanes, Mississippi's healthcare system has been seriously disrupted, adding to the myriad of health problems for people living in the state. The grant will provide an opportunity to address these health problems and to aid in restructuring the healthcare system.

If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Applications that are not complete or that do not conform to or address the criteria of this announcement will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

No more than one application per organization may be submitted to the Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program. Those organizations submitting more than one proposal for this grant program will be deemed ineligible, and the proposals will be returned without comment.

Organizations are not eligible to receive funding from more than one OMH grant program to carry out the same project and/or activities.

Section IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be obtained: At *http://www.omhrc.gov.* By writing to the Office of Grants Management, OPHS, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or contact the Office of Grants Management at (240) 453–8822. Application kits may also be requested by fax at (240) 453–8823. Please specify the program name, Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Project, when requesting an application kit.

2. Content and Form of Application Submission

A. Application and Submission

Applicants must use Grant Application Form OPHS–1 and complete the Face Page/Cover Page (SF 424), Checklist, and Budget Information Forms for Non-Construction Programs (SF 424A). In addition, the application must contain a project narrative. The project narrative (including summary

and appendices) is limited to 60 pages double-spaced.

The narrative must be printed on one side of 8½ by 11 inch white paper, with one inch margins, double-spaced and 12-point font. All pages must be numbered sequentially including any appendices. (Do not use decimals or letters, such as: 1.3 or 2A.) Do not staple or bind the application package.

The narrative description of the project must contain the following, in the order presented:

Table of Contents.

Project Summary: Describe key aspects of the Background, Objectives, Program Plan, and Evaluation Plan. The summary is limited to 3 pages.

Background:

Statement of Need: Provide a clearly stated description of the scope of the problems to be addressed by the project, and methods that will be implemented to create an Institute focusing on research, services, education/awareness, and health information. Identify partner organizations and provide the rationale for including them in the project.

Organizational Capability: Discuss the applicant organization's experience in managing project/activities, especially those targeting the population to be served, and the major accomplishments achieved. Indicate where the Institute will be located within the organization's structure, the reporting channel and how this location will allow the Institute to be successful with an effort of this magnitude. Provide a chart of the proposed project's organizational structure, showing who will report to whom and how this structure will facilitate efficient communications and timely action on key project activities. Describe how the partner organizations will interface with the applicant organization.

Objectives: State objectives in measurable terms, with baseline data and quantified expected outcome(s), and realistic target date(s) for achievement. Objectives must address each of the four program components (i.e., research, services, education/awareness, and health information) as spelled out under the Project Requirements section.

Program Plan: Describe in detail the specific project activities and strategies to be implemented to achieve each stated objective. The description should encompass information about how, when, where, for whom, and by whom activities will take place. Include a description of the active role of partner organizations in the development and implementation phases of the project. Include projected numbers of participants/beneficiaries for each activity/service. Activities must be conducted in the areas of research, services, education/awareness, and health information.

—Research. At a minimum, this activity must include:

(1) Strategies for improving the quantity and quality of data and information on the health status of rural and minority populations; identification of key health factors impacting the health of rural and minority populations; and methods for tracking changes in the health status of the targeted populations.

(2) Preventive and clinical interventions to improve the health status of rural and minority populations.

(3) Research centered on delivery of healthcare services and health policy.

—Services. At a minimum, this activity must include:

(1) Strategies, methods, and/or program models to increase the health status of rural and minority populations using community and evidence-based service delivery models that integrate and more efficiently manage existing health care resources.

—Education/Awareness. At a minimum, this activity must include:

(1) Strategies for improving availability and accessibility of information in a format and in venues that reach individuals, health care providers/practitioners, health care organizations/associations, business leaders and others.

(2) Community-based health education and consumer education models.

(3) Training of primary healthcare providers from diverse backgrounds, both geographic and racial/ethnic, to better serve the target population and to increase the number and availability of healthcare providers serving these populations.

(4) Training efforts designed to expand the health education pipeline.

—Health Information. At a minimum, this activity must include:

(1) An electronic medical records system that would be accessible by both providers and patients.

(2) An interconnected, state-wide health data exchange network.

Discuss strategies and identify funding sources for sustaining the Institute and all of its activities after the end of the Federally funded project period. Provide a timetable and the level of financial support needed to achieve self-sufficiency.

Provide a description of the proposed program staff, including resumes and job descriptions for key staff, qualifications and responsibilities of each staff member, and percent of time each will commit to the project. Provide a description of duties for any proposed consultants. Describe any products to be developed by the project. Provide a timeline for the project.

Evaluation Plan: The evaluation plan must clearly articulate how program activities will be evaluated. The evaluation plan must be able to produce documented results that demonstrate whether and how the strategies and activities funded under the Program made a difference in eliminating racial/ethnic and rural health disparities. The plan should identify the expected results (i.e., a particular impact, outcome or product) for each objective and major activity. The description should include data collection and analysis methods, demographic data to be collected on project participants, process measures describing indicators to be used to monitor and measure progress toward achieving projected results by objective, outcome measures to determine if the project has accomplished planned activities, and impact measures to demonstrate achievement of the goal to positively affect health disparities.

Discuss plans to document the steps which others may follow to replicate the proposed project in similar communities. Describe a comprehensive plan for diffusion of project results to other communities. The plan must include expectations for publishing results in professional literature and to communities in a manner and through venues that they access.

In addition to the project narrative, the application must contain a detailed budget justification which includes a narrative explanation and indicates the computation of expenditures for each year for which grant support is requested. (The budget justification does not count toward the page limitation.)

B. Data Universal Numbering System number (DUNS)

Applications must have a Dun & Bradstreet (D&B) Data Universal Numbering System number as the universal identifier when applying for Federal grants. The D&B number can be obtained by calling (866) 705–5711 or through the Web site at *http://www.dnb.com/us/.*

3. Submission Dates and Times

Application Deadline Date: July 14, 2006.

Submission Mechanisms

The Office of Public Health and Science provides multiple mechanisms

for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the Office of Grants Management, OPHS, confirming the receipt of applications submitted using any of these mechanisms. Applications submitted after the deadline described below will not be accepted for review. Applications that do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

You may submit your application in either electronic or paper format.

To submit an application electronically, use either the OPHS eGrants web site, *https://egrants.osophs.dhhs.gov* or the Grants.gov web site, *http://www.Grants.gov/.* OMH will not accept grant applications via any other means of electronic communication, including email or facsimile transmission.

Electronic Submission

If you choose to submit your application electronically, please note the following: Electronic submission is voluntary, but strongly encouraged. You will not receive additional point value because you submit a grant application in electronic format, nor will you be penalized if you submit an application in paper format. The electronic application for this program may be accessed on *https://egrants.osophs.dhhs.gov* (eGrants) or on *http://www.grants.gov/* (Grants.gov). If using Grants.gov, you must search for the downloadable application package by the CFDA number (93.910).

When you enter the eGrants or the Grants.gov sites, you will find information about submitting an application electronically, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process. Visit eGrants or Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. Grants.gov requires organizations to successfully complete a registration process prior to submission of an application. The body of the application and required forms can be submitted electronically using either system. Electronic submissions must contain all forms required by the application kit, as well as the Program Narrative, Budget Narrative, and any appendices or exhibits. Applicants using eGrants are also required to submit, by mail, a hard copy of the face page (SF424) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. (Applicants using Grants.gov are not required to submit a hard copy of the SF424, as Grants.gov uses digital signature technology.) If required, applicants using eGrants may also need to submit a hard copy of SF LLL, and/or certain program related forms (e.g., Program certifications) with original signatures.

Any other hard copy materials, or documents requiring signature, must also be submitted via mail. Mail-in items may only include publications, resumes, or organizational documentation. (If applying via eGrants, the applicant must identify the mail-in items on the Application Checklist at the time of electronic submission.) The application will not be considered complete until both the electronic application components and any hard copy materials or original signatures are received. All mailed items must be received by the Office of Grants Management, OPHS by the deadline specified below.

Your application must comply with any page limitation requirements described in this program announcement.

We strongly encourage you to submit your electronic application well before the closing date and time so that if difficulties are encountered you can still send in a hard copy overnight. If you encounter difficulties, please contact the eGrants Help Desk at 1–301–231–9898 x142 (*egrants-help@osophs,dhhs.gov*), or the Grants.gov Help Desk at 1–800–518–4726 (*support@grants.gov*) to report the problem and obtain assistance with the system.

Upon successful submission via eGrants, you will receive a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. The confirmation will also provide a listing of all items that constitute the final application submission including all electronic application components, required hard copy original signatures, and mail-in items, as well as the mailing address of the Office of Grants Management, OPHS, where all required hard copy materials must be submitted and received by the deadline specified below. As items are received by that office, the application status will be updated to reflect their receipt. Applicants are advised to monitor the status of their applications in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Upon successful submission via Grants.gov, you will receive a confirmation page indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that you print and retain this confirmation for their records, as well as a copy of the entire application package. Applications submitted via Grants.gov also undergo a validation process. Once the application is successfully validated by Grants.gov, you will again be notified and should immediately mail all required hard copy materials to the Office of Grants Management, OPHS, to be received by the deadline specified below. It is critical that you clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials. Validated applications will be electronically transferred to the OPHS eGrants system for processing. Any applications deemed ''Invalid'' by Grants.gov will not be transferred to the eGrants system. OPHS has no responsibility for any application that is not validated and transferred to OPHS from Grants.gov.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on July 14, 2006. All required hard copy original signatures and mail-in items must be received by the Office of Grants Management, OPHS, no later than 5 p.m. Eastern Time on the next business day after the deadline.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the complete application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The original and each of the two copies must include all required forms, certifications, assurances, and appendices.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the Office of Grants Management, OPHS, on or before 5 p.m. Eastern Time on July 14, 2006. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

For applications submitted in hard copy, send an original, signed in blue ink, and two copies of the complete

application to: Ms. Karen Campbell, Director, OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Required hard copy mail-in items should be sent to this same address.

4. Intergovernmental Review

The Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Mississippi has chosen to set up a review system and has designated a State Single Point of Contact (SPOC) for Mississippi.

The Mississippi SPOC is: Ms. Janet Riddell, Clearinghouse Officer, Department of Finance and Administration, 1301 Woolfolk Building, Suite E, 501 North West Street, Jackson, Mississippi 39201. Telephone: (601) 359–6762. Fax: (601) 359–6758 *Jriddell@dfa.state.ms.us.*

You should contact your SPOC as early as possible to alert her to the prospective application and receive any necessary instructions on the State process. The due date for the State process recommendation is 60 days after the application deadline established by the OPHS Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to the State process recommendation, if received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements).

The Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program is subject to Public Health Systems Reporting Requirements. Under these requirements, community-based non-governmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State or local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letter forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OPHS.

5. Funding Restrictions

Budget Request: If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Grants funds may be used to cover costs of:

Personnel.
Consultants.
Equipment.
Supplies.
Grant-related travel (domestic only).
Other grant-related costs.

Grants funds may not be used for:

Building alterations or renovations.
Construction.
Fund raising activities.
Job training.
Medical care, treatment or therapy.
Political education and lobbying.
Research studies involving human subjects.
Vocational rehabilitation.

Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kit.

Section V. Application Review Information

1. Criteria

The technical review of the Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program applications will consider the following four generic factors listed, in descending order of weight.

A. Factor 1: Program Plan (35%)

Appropriateness and merit of proposed approach and specific activities for each of the four required project components and each objective.

Logic and sequencing of the planned approaches as they relate to the needs of minority and rural populations in Mississippi and to the objectives.

Soundness of the established partnership and the roles of the partners in the program.

Soundness of the plan for self-sufficiency and potential for the Institute to be continued beyond Federal funding.

Applicant's capability to implement, manage, and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff and consultants.
—Proposed level of effort for each staff member.
—Management, research, and service delivery experience of the applicant.
—The applicant's organizational structure and proposed project organizational structure.

The applicant's prominence and influence in the state, connections to critical players and information, ability to bring together key individuals and organizations from both the local and state level to effect change.

—Appropriateness of defined roles including staff reporting channels and that of any proposed consultants.
—Clear lines of authority among the proposed staff within and between the partnering organizations.

B. Factor 2: Evaluation Plan (25%)

The degree to which expected results are appropriate for objectives and activities.

Appropriateness of the proposed data collection plan (including demographic data to be collected on project participants), analysis and reporting procedures.

Suitability of process, outcome, and impact measures for this type of project.

Clarity and soundness of the intent and plans to assess and document progress towards achieving objectives, planned activities, and intended outcomes.

Potential for the proposed project to impact the health status of the target population(s).

Soundness of the plan for diffusing project outcomes.

C. Factor 3: Background (20%)

Demonstrated experience with addressing health problems for the targeted populations in Mississippi.

Significance and prevalence of health issues in the proposed community and target population.

Extent to which the applicant demonstrates access to the target community(ies), and whether it is well positioned and accepted within the community(ies) to be served.

Extent and documented outcome of past efforts and activities with the target population.

D. Factor 4: Objectives (20%)

Merit of the objectives for each of the four required program components (*i.e.*,

Research, Services, Education and Health Information) .

Relevance to the OMH Program purpose and expectations, and the stated problems to be addressed by the proposed project.

Degree to which the objectives are stated in measurable terms.

Attainability of the objectives in the stated time frames.

2. Review and Selection Process

Accepted Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Committee (ORC). Committee members are chosen for their expertise in minority health and health disparities, and their understanding of the unique health problems and related issues confronted by the racial, ethnic and rural populations in the United States. Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health who will take under consideration the recommendations and ratings of the ORC.

3. Anticipated Award Date

September 1, 2006.

Section VI. Award Administration Information

1. Award Notice

The successful applicant will receive a notification letter from the Deputy Assistant Secretary for Minority Health and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the Office of Minority Health. Unsuccessful applicants will receive notification from OPHS.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The DHHS Appropriations Act requires that, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting Requirements

The successful applicant under this notice will submit: (1) Semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR Part 74.51–74.52, with the excepting of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply.

Uniform Data Set: The Uniform Data Set (UDS) is a web-based system used by OMH grantees to electronically report progress data to OMH. It allows OMH to more clearly and systematically link grant activities to OMH-wide goals and objectives, and document programming impacts and results. All OMH grantees are required to report program information via the UDS (*http://www.dsgonline.com/omh/uds*). Training will be provided on the use of the UDS system.

The grantee will be informed of the progress report due dates and means of submission. Instructions and report format will be provided prior to the required due date. The Annual Financial Status Report is due no later than 90 days after the close of each budget period. The final progress report and Financial Status Report are due 90 days after the end of the project period. Instructions and due dates will provided prior to required submission.

Section VII. Agency Contacts

For questions on budget and business aspects for the application, contact Mr. DeWayne Wynn, Grants Management Specialist, OPHS Office of Grants Management, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Mr. Wynn can be reached by telephone at (240) 453–8822; or by e-mail at *dwynn@osophs.dhh.gov.*

For questions related to the Mississippi Institute for Improvement of Geographic Minority Health and Health Disparities Program or assistance in preparing a grant proposal, contact Ms. Cynthia Amis, Director, Division of Program Operations, Office of Minority Health, Tower Building, Suite 600, 1101 Wootton Parkway, Rockville, MD 20852. Ms. Amis can be reached by telephone at (240) 453–8444; or by e-mail at *camis@osophs.dhhs.gov.*

For additional technical assistance, contact the OMH Regional Minority Health Consultant for your region listed in your grant application kit.

For health information, call the OMH Resource Center (OMHRC) at 1–800–444–6472.

Section VIII. Other Information

1. Healthy People 2010

The Public Health Service (PHS) is committed to achieving the health promoting and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 Web site: *http://www.healthypeople.gov* and copies of the documents may be downloaded. Copies of the Healthy People 2010: Volumes I and II can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $20.00 for CD–ROM). Another reference is the Healthy People 2010 Final Review-2001.

For one free copy of the Healthy People 2010, contact: The National Center for Health Statistics, Division of Data Services, 3311 Toledo Road, Hyattsville, MD 20782, or by telephone at (301) 458–4636. Ask for HHS Publication No. (PHS) 99–1256. This document may also be downloaded from: *http://www.healthypeople.gov.*

2. Definitions

For purposes of this announcement, the following definitions apply:

Community-Based Organizations—Private, nonprofit organizations that are representative of communities or significant segments of communities where the control and decision making powers are located at the community level.

Community-Based, Minority-Serving Organization—A community-based organization that has a history of service to racial/ethnic minority populations. (See Definition of Minority Populations below.)

Minority Populations—American Indian or Alaska Native; Asian; Black or African American; Hispanic or Latino; Native Hawaiian or other Pacific Islander (42 U.S.C. 300u–6, section 1707 of the Public Health Service Act, as amended)

Nonprofit Organizations—Corporations or associations, no part of whose net earnings may lawfully inure to the benefit of any private shareholder or individual. Proof of nonprofit status must be submitted by private nonprofit organizations with the application or, if previously filed with PHS, the applicant must state where and when the proof was submitted.

Dated: May 26, 2006.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health.

[FR Doc. E6–9315 Filed 6–13–06; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the Citizens' Health Care Working Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Citizens' Health Care Working Group (the Working Group) mandated by section 1014 of the Medicare Modernization Act.

DATES: A business meeting of the Working Group will be held on Wednesday June 21, 2006 and Thursday June 22, 2006. On June 21st, the session will begin at 8:30 a.m. and end at 4 p.m. On June 22nd, the session will begin at 8:30 a.m. and end at 2 p.m.

ADDRESSES: The meeting will take place at the conference room of the United Food and Commercial Workers International Union. The office is located at 1775 K Street, NW., Washington, DC 20006. The main receptionist area is location on the 7th floor; the conference room is located on the 11th floor. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *caroline.taplin@ahrq.hhs.gov*. If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda for this Working Group meeting will be available on the Citizens' Working Group Web site, *www.citizenshealthcare.gov*. also available at that site is a roster of Working Group members. When a summary of this meeting is completed, it will also be available on the Web site.

SUPPLEMENTARY INFORMATION: Section 1014 of Public Law 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and, (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: The Secretary of DHHS is designated as a member by statute. The Comptroller General of the U.S. Government Accountability Office (GAO) was directed to name the remaining 14 members whose appointments were announced on February 28, 2005.

Working Group Meeting Agenda

The Working Group meeting on June 21st and June 22nd will be devoted to ongoing Working Group business. The principal topic to be addressed will be the continued refinement of materials associated with the Working Group's interim recommendations which were posted ont he Working Group's Web site *http://www.citizenshealthcare.gov* on June 2, 2006.

Submission of Written Information

To fulfill its charge described above, the Working Group has been conducting a public dialogue on health care in America through public meetings held across the country and through comments received on its Web site. The Working Group invites members of the public to the Web site to be part of that dialogue.

Further, the Working Group will accept written submissions for consideration at the Working Group business meeting listed above. In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group at this meeting should submit information electronically to *citizenshealth@ahrq.gov*.

Dated: June 5, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–5377 Filed 6–13–06; 8:45 am]

BILLING CODE 4610–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Citizen's Health Care Working Group Interim Recommendations

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Publication of Interim Recommendations of the Citizens' Health Care Working Group, Request for Public Comment.

SUMMARY: The Citizens' Health Care Working Group (the Working Group), authorized by section 1014 of the Medicare Modernization Act, is publishing interim recommendations and requesting public comment on them.

DATES: Comments should be received on or before August 31, 2006.

ADDRESSES: Comments may be submitted either electronically or on paper.

Electronic Statements

Send comments online to the Work Group's Web site using this address: *http://www.citizenshealthcare.gov.* or by e-mail to *Citzenshealth@ahrq.gov*

Paper Comments

Send paper comments in duplicate to: George Grob, Executive Director, Citizens' Health Care Working Group, Suite 575, 7201 Wisconsin Avenue, Bethesda, Maryland 20814. You may also fax comments to (301) 480–3095.

To help us review your comments efficiently please use only one method of commenting.

All comments will be made available on the Working Group's Web site. All comments will be posted without change. You should submit only information that you wish to make available publicly. Comments will also be available for public inspection and copying at the Working Group's Bethesda office during normal business hours.

FOR FURTHER INFORMATION CONTACT: George Grob, Executive Director, Citizens' Health Care Working Group, (301) 443–1530, *george.grob@ahrq.hhs.gov* or Caroline Taplin, Senior Program Analyst, (301) 443–1514, *caroline.taplin@ahrq.hhs.gov*

SUPPLEMENTARY INFORMATION: Section 1014 of Pub. L. 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a

Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to provide for a nationwide public debate about improving the health care system; develop and seek public comment on interim recommendations arising from this debate; and submit its final recommendations to the President and Congress.

The Citizens' Health Care Working Group is composed of 15 members: The Secretary of DHHS is designated as a member by statute and the remaining 14 members were appointed to the Working Group by Comptroller General of the U.S. Government Accountability Office and announced on February 28, 2005.

The statute requires that interim recommendations be made available on the internet for a ninety day public comment period and also made available through other public channels. Interim recommendations were posted on the Working Group's Web site on June 2, 2006. This notice constitutes an additional public channel.

These recommendations outline a vision and a plan for achieving broad-based change in health care in America, to which members of the Working Group have agreed. Over the next three months, the Working Group intends to further refine these proposals, using the public input it actively seeks.

Review Text

The text of the interim recommendations and related materials follow:

Interim Recommendations of the Citizens' Health Care Working Group

June 1, 2006

Preamble

The health care system that captures vast amounts of America's resources, employs many of its most talented citizens and promises to relieve the burdens of dread disease badly needs to be fixed. Health care costs strain individual, household, employer and public budgets. Often our citizens forego needed treatment because they are pried out of the market. At the same time, public budgets are bucking under the burden of public health care programs.

We spend nearly $2 trillion on health care each year, yet geography, race, ethnicity, language and money impeded Americans from getting appropriate care when they need it. People in Utah recently spoke for tens of millions of Americans when they noted.

''[the] inability to navigate the health care system without luck, a relationship, money and perseverance''.

Far too often sick Americans lack one or more of these factors needed to get health care.

Given the breaktaking advances in medical science—American health care sadly under achieves. The health care system gets Americans the right care, and only the right care, about 50% of the time. As many as 98,000 Americans die because of medical errors each year. Polls of American households reveal that about one third of Americans report that they or a family member have experience a medical error at some point in their life. While no system can ever eliminate all error, we can do better. While most Americans are generally satisfied with their health care, too many Americans are being let down by their health care institutions. Many people are afraid of the health care system, they are bewildered by its complexity and are suspicious about who it aims to serve.

Addressing the problems of U.S. health care involves considering the perspectives, interests and circumstances of providers, payers, health plans and consumers. We have spent 15 months reading, listening and learning about U.S. health care from a wide range of perspectives. We have held 6 hearings with experts, stakeholders, scholars, public officials and advocates. We have conducted 31 community meetings, as well as special topic meetings and sponsored meetings in 30 states and the District of Columbia. We have reviewed all the major public opinion polls focused on health care conducted between 2002 and 2006. Citizen responses to the Working Group's internet polls (over 10,000 as of May 15) were studied. Finally, we have read close to 5,000 individuals' commentaries on health care matters submitted by residents of this country.

A picture has been sketched for us of a health care system that is unintelligible to most people. They see a rigid system with a set of ingrained operating procedures that long ago become disconnected from the mission of providing people with humane, respectful and technically excellent health care.

The legislation that created the Citizens Health Care Working Group emphasizes the need to bring the views of everyday Americans to the job of creating a better health care system. In previous health care reform efforts, too little has been heard from the public about several key issues, including:

- The overarching values and aspirations that are at the heart of the mission of health care, and
- How they see the key elements of solutions to health care financing and delivery.

It is in the spirit of giving a greater voice to everyday people that we deliver these recommendations on how to make health care work for all Americans

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The Charge to the Citizens' Health Care Working Group

The Citizens' Health Care Working Group was created by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Sec. 1014 to provide for the American public to ''engage in an informed national public debate to make choices about the services they want covered, what health care coverage they want, and how they are willing to pay for coverage.'' Appointed by the Comptroller General of the United States, the Working Group consists of 14 individuals from diverse backgrounds, representing consumers, the uninsured, those with disabilities, individuals with expertise in financing benefits, business and labor perspectives, and health care providers. The Secretary of Health and Human Services also serves as a member of the Working Group. Because the Working Group's final recommendations will be submitted to the Department of Health and Human Services, the Secretary of Health and Human Services has neither participated in the development of these recommendations nor has he endorsed them. He will carefully consider them and take appropriate action.

The legislation charged the working group with holding hearings on various health care issues before issuing The Health Report to the American People. This report, completed in October 2005, provides an overview of health care in the United States for the general public, enabling them to be informed participants in the national discussion organized by the Working Group.

The law specifies that this national discussion take place through a series of Community Meetings, which as a minimum, address the following four questions:

—What health care benefits and services should be provided?
—How does the American public want health care delivered?
—How should health care coverage be financed?
—What trade-offs are the American public willing to make in either benefits or financing to ensure access to affordable, high quality health care coverage and services?

As noted in the Preamble of this document, we held 6 hearings with experts, stakeholders, scholars, public officials and advocates. We conducted 312 community meetings, as well as special topic meetings and sponsored events, in more than 50 communities across the nation. Members attended meetings in 30 states and the District of Columbia. We reviewed all the major public opinion polls focused on health care conducted between 2002 and 2006. Citizen responses to the Working Group's internet polls (over 10,000 as of May 15) were studied. Finally, we have read close to 5,000 individuals' commentaries on health care matters submitted by residents of this country.

Following this nationwide citizen engagement, the Working Group is required to prepare and make available to the public this interim set of recommendations on ''health care coverage and ways to improve and strengthen the health care system based on the information and preferences expressed at the community meetings.'' Following a 90-day public comment period on these recommendations, the Working Group will submit to Congress and the President a final set of recommendations. The law specifies that the President shall submit a report to congress on the recommendations within 45 days of receiving them, and designates five congressional committees that will hold hearings on that report and the recommendations: the Committee on Finance of the Senate, the Committee on Health, Education, Labor and Pensions of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Education and the Workforce of the House of Representatives.

Following are the interim recommendations of the Citizens' Health Care Working Group, along with descriptions of how we conducted our work and what we heard from participants in community meetings, respondents to our Web polls, and citizens who wrote in to tell us their views.

These recommendations outline a vision and a plan for achieving broad-based change in health care in America. We recognize that the issues involved are complex and challenging, and that it will take time and a great deal of technical expertise, as well as political will, to make the changes we think are necessary. Over the next three months, we will continue to actively pursue public input as we deliberate and further refine these proposals. During this process, we will provide greater detail and explanation of our recommendations, as well as further analysis of what we are hearing from the American people before issuing the final recommendations to the Congress and the President.

Those wishing to comment on the interim recommendations may do so by August 31, 2006 in any of three ways:

- online at *www.CitizensHealthCare.gov;*
- by e-mail to *citizenshealth@ahrq.gov;* or
- by mail to the following address: Citizens' Health Care Working Group, Attn: Interim Recommendations, 7201 Wisconsin Ave, Rm. 575, Bethesda, MD 20814.

Values & Principles

The Citizens Health Care Working Group believes that reform of our health care system should be guided by principles that reflect values of the American people:

- Health and health care are fundamental to the well-being and security of the American people.
- It should be public policy, established in law, that all Americans have affordable health care coverage.
- Assuring health care is a shared social responsibility. This includes, on the one hand, a public responsibility for the health and security of its people, and on the other hand, the responsibility of everyone to contribute.

○ A defined set of benefits is guaranteed, by law, for all, across their lifespan, in a simple and seamless manner; the benefits are portable and independent of health status, working status, age, income, or other categorical factors that might otherwise affect insurance status.

○ Individuals' security is assured: as defined in law, changes in circumstances cannot be used to limit full access to benefits.

- All Americans will have access to set of core health care services across the continuum of care throughout the lifespan.

○ Access to care means that everyone should be able to get the right care at the right time and at the right place. Appropriate health care must be available and affordable, as well as convenient and accessible for people in their communities. People's ability to get services and be treated appropriately and in a respectful manner are also essential aspects of access to care.

○ Health care encompasses wellness, preventive services, and treatment and management of health problems.

- Core benefits/services will be selected through an independent, fair, transparent, and scientific process which gives priority to the consumer-health care provider relationship:

○ Identification of core benefits will be made and updated by a public/private entity whose members are appointed through a process defined in law which

—Includes citizens representing a broad spectrum of the population
—Will specify core benefits taking into account evidence-based science and expert consensus regarding the effectiveness of treatments.

○ Additional coverage for services beyond the core package can be purchased.

- Shared social responsibility implies consideration of health care costs.

○ Health care spending needs to be considered in the context of other social needs and responsibilities. Because resources for health care spending are not unlimited, the efficient use of public and private resources is critical.

○ Individuals should be responsible, to the extent possible, to be good stewards of their health and health care resources.

Interim Recommendations

- Core Benefits: Americans will have access to a set of affordable and appropriate core health care services by the year 2012.

Recommendation 1: It should be public policy that all Americans have affordable health care

All Americans will have access to set of core health care services. Financial assistance will be available to those who need it.

Across every venue we explored, we heard a common message: Americans should have a health care system where everyone participates, regardless of their financial resources or health status, with benefits that are sufficiently comprehensive to provide access to appropriate, high-quality care without endangering individual or family financial security.

Financing Health Care That Works for All Americans

This and other of the recommendations contained here call for actions that will require new revenues to provide some health care security for Americans who are now at great risk. The opinion polls we examined, the community meetings we held, and the web based surveys and comments we received, all showed large majorities of people willing to make additional financial investments in the service of expanding the protection against the costs of illness and the expansion of access to quality care.

We recommend adopting financing strategies for these recommendations that are based on principles of fairness, efficiency, and shared responsibility. These strategies should draw on dedicated revenue streams such as enrollee contributions, income taxes or surcharges, ''sin taxes'', business or payroll taxes, or value-added taxes that are targeted at supporting these new health care initiatives.

We note that improvements in efficiency through a variety of mechanisms such as investments in health information technology, public reporting, and quality improvement may be realized over time. To the extent that such efficiency gains are obtained they would be used to assist in paying for new protections such as those against catastrophic health care expenditures and the impoverishment of individuals as a result of getting the health care they need.

No specific health care financing mechanism is optimal. We understand that the transition from the current system to a system that includes all Americans will take time and that multiple financing sources will need to coexist during the move to universal coverage. However, the disparate parts must be brought together in a way that ensures a seamless and smooth transition.

Recommendation 2: Define a ''Core'' Benefit Package for All Americans

Establish an independent non-partisan private-public group to identify and update recommendations for what would be covered under high-cost protection and core benefits.

- Members will be appointed through a process defined in law that includes citizens representing a broad spectrum of the population including, but not limited to, patients, providers, and payers, and staffed by experts.
- Identification of high cost and core benefits will be made through an independent, fair, transparent and scientific process.

The set of core health services will go across the continuum of care throughout the lifespan.

- Health care encompasses wellness, preventived services, primary care, acute care, prescription drugs, patient education and treatment and management of health problems provided across a full range of inpatient and outpatient settings.
- Health is defined to include physical, mental and dental health.
- Core benefits will be specified by taking into account evidence-based science and expert consensus regarding the medical effectiveness of treatments.
- Immediate Protection for the Most Vulnerable: Action should be taken now to better protect Americans from the high costs of health care and to improve and expand access to health care services.

Recommendation 3: Guarantee financial protection against very high health care costs.

No one in America should be impoverished by health care costs.

Establish a national program (private or public) that ensures

- Coverage for all Americans,
- Protection against very high out-of-pocket medical costs for everyone, and
- Financial protection for low income individuals and families.

Recommendation 4: Support integrated community health networks

The Federal Government will lead a national initiative to develop and expand integrated public/private community networks of health care providers aimed at providing vulnerable populations, including low income and uninsured people, and people living in rural and underserved areas, with a source of high quality coordinated health care by:

- Identifying within the federal government the unit with specific responsibility for coordinating all federal efforts that support the health care safety net;
- Establishing a public-private group at the national level that is responsible for advising the federal government on the nation's health care safety net's performance and funding streams, conducting research on safety net issues, and identifying and disseminating best practices on an ongoing basis;
- Expanding and modifying the Federal Qualified Health Center concept to accommodate other community-based health centers and practices serving vulnerable populations; and
- Providing federal support for the development of integrated community health networks to strengthen the health care infrastructure at the local level, with a focus on populations and localities where improved access to quality care is most needed.
- Quality and Efficiency: Intensified efforts are central to the successful transformation of health care in America.

Recommendation 5: Promote efforts to improve quality of care and efficiency

The Federal Government will expand and accelerate its use of the resources of its public programs for advancing the development and implementation of strategies to improve quality and efficiency while controlling costs across the entire health care system.

- Using federally-funded health programs such as Medicare, Medicaid, Community Health Centers, TRICARE, and the Veterans' Health Administration, the Federal Government will promote:
  - Integrated health care systems built around evidence-based best practices;
  - Health information technologies and electronic medical record systems with special emphasis on their implementation in teaching hospitals and clinics where medical residents are trained and who work with underserved and uninsured populations;
  - Reduction of fraud and waste in administration and clinical practice;
  - Consumer-usable information about health care services that includes information on prices, cost-sharing, quality and efficiency, and benefits; and
  - Health education, patient-provider communication, and patient-centered care, disease prevention, and health promotion.

Recommendation 6: Fundamentally restructure the way that palliative care, hospice care and other end-of-life services are financed and provided, so that people living with advanced incurable conditions have increased access to those services in the environment they choose

Individuals nearing the end of life and their families need support from the health care system to understand their health care options, make their choices about care delivery known, and have those choices honored.

- Public and private payers should integrate evidence based science, expert consensus, and culturally sensitive end of life care models so that health services and community-based care can better deal with the clinical realities and actual needs of chronically and seriously ill patients of any age and their families.

• Public and private programs should support training for health professionals to emphasize proactive, individualized care planning and clear communication between providers, patients and their families.

• At the community level, funding should be made available for support services to assist individuals and families in accessing the kind of care they want for last days.

Members of the Citizens' Health Care Working Group

Randall L. Johnson, Chair
Frank J. Baumeister, Jr.
Dorothy A. Bazos
Montye S. Conlan
Richard G. Frank
Joseph T. Hansen
Therese A. Hughes
Brent C. James
Catherine G. McLaughlin
Patricia A. Maryland
Rosario Perez
Aaron Shirley
Deborah R. Stehr
Christine L. Wright
Michael O. Leavitt, Secretary of Health and Human Services

Because the Working Group's final recommendations will be submitted to the Department of Health and Human services, the Secretary of Health and Human Services has neither participated in the development of these recommendations nor has he endorsed them. He will carefully consider them and take appropriate action.

End of Review Text

Additional materials including a description of how the Working Group did its work, key findings from the dialogue with the American people, stories from Americans, and background material on the demographics and health resources of locations where Working Group community meetings were held, findings from the Working Group's internet poll and University town hall meeting, and a summary of presentations made to the Working Group can be found on the Working Group's Web site: *www.citizenshealthcare.gov.*

Authority: This notice is published in accordance with section 10(a) of the Federal Advisory Committee Act.

The Medicare Modernization Act charged AHRQ with administering the funds provided by the Congress for the activities of the Citizens' Health Care Working Group. However, AHRQ has not participated in the development of these recommendations or supporting material, has had not advance knowledge of their content, and publication of this notice is not an endorsement of the Working Group's recommendations by AHRQ or the Department of Health and Human Services.

Carolyn M. Clancy,

Director.

[FR Doc. 06–5379 Filed 6–13–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications submitted in response to the Request for Applications (RFA) Number: RFA–HS–06–030, Improving Patient Safety through Simulation Research, are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Improving Patient Safety through Simulation Research, July 11–13, 2006.

Date: July 11, 2006 (Open on July 11 from 7 p.m. to 7:15 p.m. and closed for the remainder of the meeting).

Place: Marriott Gaithersburg Washingtonian, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Date: July 12–13, 2006 (Closed meeting).

Place: John M. Eisenberg Building, 540 Gaither Road, Suite 2020, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 2, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–5378 Filed 6–13–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels: Prevention of the Complications of Bleeding Disorders Through Hemophilia Treatment Centers, Request for Applications (RFA) DD06–005

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Prevention of the Complications of Bleeding Disorders through Hemophilia Treatment Centers, RFA DD06–005.

Time and Date: 8 a.m.–5 p.m., June 28, 2006 (Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Building 19, Room 256/257, Atlanta, GA 30333.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: To conduct expert review of scientific merit of research applications in response to RFA DD06–005, ''Prevention of the Complications of Bleeding Disorders through Hemophilia Treatment Centers.''

For Further Information Contact: Juliana Cyril, Ph.D., Scientific Review Administrator, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone 404.639.4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–9269 Filed 6–13–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: HIV Prevention Projects for Young Men of Color Who Have Sex With Men and Young Transgender Persons of Color, Funding Opportunity Announcement (FOA) PS06–618

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: HIV Prevention Projects for Young Men of Color Who Have Sex With Men and Young Transgender Persons of Color, FOA PS06–618.

Times and Dates:

9 a.m.–12 p.m., June 26, 2006 (Closed).
9 a.m.–5 p.m., June 27, 2006 (Closed).
9 a.m.–5 p.m., June 28, 2006 (Closed).
9 a.m.–5 p.m., June 29, 2006 (Closed).
9 a.m.–5 p.m., June 30, 2006 (Closed).

Place: W Hotel Atlanta at Perimeter Center, 111 Perimeter Center West, Atlanta, Georgia 30346, Telephone 770.396.6800.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''HIV Prevention Projects for Young Men of Color Who Have Sex With Men and Young Transgender Persons of Color,'' FOA PS06–618.

For Further Information Contact: Beth Wolfe, Resource Funding Analyst, Funding Activities Services Office, Extramural Funding Activities Unit, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–07, Atlanta, GA 30333, Telephone 404.639.8531.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–9270 Filed 6–13–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

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 Federal Committee meeting.

Correction: This notice was published in the **Federal Register** on June 9, 2006, volume 71, number 111, pages 33456–33457. ''Additional Information'' that was published on April 3, 2006, volume 71, number 63, page 16582, and a change to the 'status' has been added.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates:

8 a.m.–6 p.m., June 29, 2006.
8 a.m.–4 p.m., June 30, 2006.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Building 19 (Global Communications Center), Room 232, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. Meeting space accommodates approximately 330 people. Overflow space for real-time viewing will be available.

Additional Information: In order to expedite the security clearance process at the CDC Clifton Road Campus, all ACIP attendees are now required to register online at *http://www.cdc.gov/nip/acip*, which can be found under the ''Upcoming Meetings'' tab. Please be sure to complete all the required fields before submitting your registration and submit no later than June 22, 2006.

Please Note: All non-U.S. Citizens must pre-register by June 18, 2006 or they will not be allowed access to the campus and will *not* be allowed to register on site. All non-U.S. Citizens are required to complete the ''Access Request Form'' and register online at *http://www.cdc.gov/nip/acip*. The access request form can be obtained by contacting Demetria Gardner at 1–404–639–8836 and should be e-mailed upon completion directly to Ms. Gardner at *dgardner@cdc.gov*.

For Further Information Contact: Demetria Gardner, Immunization Services Division, National Center for Immunization and Respiratory Diseases (proposed), CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–8905.

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: June 8, 2006.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–9266 Filed 6–13–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002E–0100]

Determination of Regulatory Review Period for Purposes of Patent Extension; DUTASTERIDE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DUTASTERIDE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–

417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DUTASTERIDE (dutasteride). DUTASTERIDE is indicated for the treatment of symptomatic benign prostatic hyperplasia in men with an enlarged prostate gland. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DUTASTERIDE (U.S. Patent No. 5,565,467) from GlaxoSmithKline, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DUTASTERIDE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DUTASTERIDE is 2,373 days. Of this time, 2,038 days occurred during the testing phase of the regulatory review period, while 335 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 25, 1995. The applicant claims April 24, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 25, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 21, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for DUTASTERIDE (NDA 21–319) was initially submitted on December 21, 2000.

3. *The date the application was approved*: November 20, 2001. FDA has verified the applicant's claim that NDA 21–319 was approved on November 20, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 769 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9224 Filed 6–13–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0042]

Determination of Regulatory Review Period for Purposes of Patent Extension; CUBICIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CUBICIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes

effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CUBICIN (daptomycin). CUBICIN is indicated for the treatment of complicated skin and skin structure infections caused by susceptible strains of the following Gram-positive microorganisms: *Staphylococcus aureus* (including methicillin-resistant strains), *Streptococcus pyogenes*, *S. agalactiae*, *S. dysgalactiae subsp. equismilis*, and *Enterococcus faecalis* (vancomycin-susceptible strains only). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CUBICIN (U.S. Patent No. 4,885,243) from Cubist Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CUBICIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CUBICIN is 6,444 days. Of this time, 6,177 days occurred during the testing phase of the regulatory review period, while 267 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 22, 1986. The applicant claims January 18, 1986, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 22, 1986, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 20, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for CUBICIN (NDA 21–572) was initially submitted on December 20, 2002.

3. *The date the application was approved*: September 12, 2003. FDA has verified the applicant's claim that NDA 21–572 was approved on September 12, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,347 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9225 Filed 6–13–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Cooperative Research and Development Agreement (CRADA) Opportunity for Furthering the Development of a Suite of Computer Programs for Modeling and Simulating Complex Cellular Biological Processes

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID), a component of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), seeks to enter into a CRADA with a commercial partner to co-develop a suite of computer programs for modeling and simulating complex cellular biological processes.

The existing suite of computer programs allows biologists to develop and test quantitative models of cell biological processes. The graphical interfaces of the programs make it possible to develop realistic models of molecular interactions and cellular processes that take into account the intracellular and extracellular spatial inhomogeneity of signaling components without the user having to deal with the partial differential equations and state automata that underlie the quantitative simulation of the models. The program suite offers graphical symbols and drag-and-drop mechanisms to define molecular interactions, molecular complexes, cellular stimulus-response mechanisms, and the structure of extracellular compartments. An intuitive graphical interface can be used to inspect and interact with running simulations; for example, molecules and cells can be placed into the simulated compartments, cells can be selected for detailed analysis of their behavior and intracellular, spatially-resolved biochemistry. One part of the program suite reads the molecular interaction network data that are generated by the program based on the user defined bimolecular interactions and displays them as interaction graphs, visualizing the reaction dynamics in the modeled cellular signaling pathways.

It is anticipated that the collaboration will result in the commercialization of the software.

DATES: NIAID will consider all capability statements received within 45 days of the date of publication of this notice. Capability statements received thereafter may be considered if a

suitable CRADA collaborator has not been selected.

FOR FURTHER INFORMATION CONTACT: Queries and capability statements should be addressed to William C. Ronnenberg, JD, M.I.P., Office of Technology Development, National Institute of Allergy and Infectious Diseases, 6610 Rockledge Drive, Room 4071, MSC 6606, Bethesda, MD 20892–6606 (Zip Code for Courier: 20817), telephone 301–451–3522, fax: 301–402–7123, e-mail: *wronnenberg@niaid.nih.gov.*

SUPPLEMENTARY INFORMATION: With the increased availability of detailed proteomic data, the main obstacle to developing realistic software-based simulation models of cellular signaling processes is the technical difficulty of transforming complex biological models into quantitative simulations. Biological models typically describe cellular signaling processes in terms of bimolecular interactions or the interaction between specific sites on two proteins. These bimolecular interactions can be integrated by available software into diagrammatic representations of signaling pathways. However, these descriptions are generally qualitative and are not useful for a quantitative understanding of the underlying biological systems. For quantitative representations of biological models, the current approach is to ask theorists (mathematicians, physicists, etc.) to transform these qualitative models into sets of equations or automata rules that roughly reflect the properties of the original model. The resulting descriptions of complex biological models are frequently inadequate because the theorist involved lacks an understanding of biological details or the resulting mathematical descriptions are over-simplified.

The goals of the proposed CRADA are to integrate an existing software program for the simulation of multi-scale, cellular, biological models with protein database interfaces and to improve the software's graphical user interface. NIAID has developed, in part, software that simulates reaction networks of all possible molecular interactions in biological systems based on user inputs. The current development stage of the software combines several unique features, such as a graphical interface for the definition and simulation of cell biological models spanning the scale from bi-molecular interactions to the behavior of cell populations. Its internal algorithms for the integration of the partial differential equations governing the spatio-temporal behavior of the simulated biological system use state-of-the-art approaches to deal with very large reaction networks and the stiffness of the equations.

Simulations created with the software take into account the differential behavior of cytosolic and membrane-bound complexes as well as transmembrane signaling events and generates the equivalent of a set of partial differential equations describing the spatio-temporal dynamics of the system. The graphical user interface of the software allows the user to define bi-molecular interactions, enzymatic transformations, (initial) spatial distribution of the components of cellular biochemistry and the location of cells within extracellular spatial compartments. Based on the initial distribution of molecules and cells defined by the user the software then simulates the behavior of the system providing a range of different graphical and tabular representations of the system's evolving state. At any time during the simulations, the user can add components (cells, molecules) and query the detailed biochemical state of cells (localized concentrations of signaling components) and investigate how these correlate with the cells' behavior.

The capability statement must address, with specificity, each of the following selection criteria:

(1) A demonstration of expertise and experience in the areas of design and coding of biological software with an extensive GUI component, as well as the development of supporting documentation;

(2) A demonstration of and a willingness to commit reasonable and adequate resources (including facilities, equipment, and personnel) the development of this technology;

(3) A demonstration of the expertise and ability to commercially develop, produce, sell, and provide user support for similar technologies; and

(4) Ability to provide adequate and sustained funding for CRADA activities.

Dated: June 2, 2006.

Michael R. Mowatt,

Director, Office of Technology Development, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. E6–9301 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Generation of Regulatory T Cells for Immunotherapy

Description of Technology: Abnormalities in immunoregulation are responsible for a wide variety of disorders such as autoimmune disease, chronic inflammatory diseases, and allergic diseases. These diseases include systemic lupus erythematosus, rheumatoid arthritis, type I diabetes mellitus, inflammatory bowel disease, multiple sclerosis, Crohn's disease and asthma. The defining event for induction of an immune-mediated disorder is the loss of T cell tolerance to self-antigens, which is provided by regulatory T cells. Traditional methods for treating immune-mediated disorders involve the use of steroids or other immunosuppressive drugs, which have significant undesirable side effects.

This invention provides methods for generating regulatory T cells by culturing CD4+CD25 − T cells with autologous antigen-presenting cells (APCs) in the presence of the Th2 cytokines interleukin-4 (IL-4) and/or interleukin-13 (IL-13). Immunotherapy via this mechanism is anticipated to have a large number of potential therapeutic applications. Methods are also provided for treatment of

autoimmune disease or inflammation in a subject by administration of an IL-4 agonist, as well as methods of treating cancer by administration of an IL-4 antagonist.

Applications: Therapeutic method for treatment of autoimmune disease or inflammation; Therapeutic method to prevent graft rejection in a transplant recipient; Therapeutic method for treatment of cancer; Diagnostic test for efficacy of an IL-4 antagonist in cancer treatment.

Development Status: Early stage.

Inventors: Peter E. Lipsky (NIAMS) *et al.*

Publication: A Skapenko *et al.,* ''The IL-4 receptor alpha-chain-binding cytokines, IL-4 and IL-13, induce forkhead box P3-expressing CD25+CD4+ regulatory T cells from CD25 − CD4+ precursors,'' J Immunol. (2005 Nov 1) 175(9):6107–6116.

Patent Status: U.S. Provisional Application No. 60/728,475 filed 19 Oct 2005 (HHS Reference No. E–010–2005/1–US–01).

Licensing Status: This technology is available for exclusive, co-exclusive, or nonexclusive licensing.

Licensing Contact: Marlene K. Astor, JD, MS, MIP; 301/435–4426; *ms482m@nih.gov.*

Collaborative Research Opportunity: The NIAMS, Autoimmunity Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a process for the generation of regulatory T cells for immunotherapy. Please contact Dr. Peter E Lipsky at 301/594–0596 or *lipskyp@mail.nih.gov* for more information.

Method Evolved for Recognition of Thrombophilia (MERT): Clinical Predictive Genetic Test for Venous Thrombosis

Description of Technology: Venous thrombosis (VT) is one of the leading causes of mortality and morbidity resulting in approximately 300,000 hospitalizations and 50,000 fatalities per year in the United States with an incidence of 141 per 100,000 African-Americans, 104 per 100,000 Caucasians and 21 per 100,000 Asian/Pacific Islanders. However, it is an avoidable disease if effective preventive measures such as early thromboprophylaxis are instituted.

It is highly beneficial to estimate individual thrombotic risk to aid in development of individualized risk-adapted prophylaxis.

Venous thrombosis is a multifactorial disorder and occurs as an outcome of a combination of environmental and genetic risk factors. In addition to well-established venous thrombosis associated acquired or environmental factors such as surgery, use of oral contraceptives and/or hormone replacement therapy, trauma, bone fractures, prolonged immobilization, advanced age, previous thrombosis history, malignancy and pregnancy, genetic predisposition via a number of variably penetrant genetic mutations or polymorphisms impart an increased risk for venous thrombosis.

In pregnant women, inherited thrombophilia can greatly increase the risk of adverse pregnancy outcomes such as miscarriages, intrauterine growth restriction, preeclampsia, placental abruption, or stillbirth as well as thrombosis during the recovery period after childbirth.

In addition to the differences in the prevalence of venous thrombosis among ethnic groups, there are accumulating data revealing differences in genetic determinants among ethnic groups such as differences in susceptibility associated genes and even in sequence alterations of the same gene. Furthermore some of the mutations and polymorphisms are mainly restricted to the specific populations. Such examples are FV Leiden, prothrombin G20210A polymorphisms. Whereas FV Leiden and prothrombin G0210A polymorphisms are the most prevalent risk factors for venous thrombosis in Caucasians, the patients from ethic populations other than Caucasians exhibit no or very rare FV Leiden or prothrombin G20210A polymorphisms.

This invention describes a highly-predictive genetic test to identify individuals with increased risk for venous thrombosis. It comprises a rapid, accurate and affordable genetic screen, utilizing genomic DNA microarray technology consisting of a combination of venous thrombosis associated mutations and polymorphisms that is applicable to diverse ethnic populations. Eight genes (antithrombin III, PC, PS, fibrinogen, factor V, prothrombin (factor II), MTHFR and ACE) are screened for the 143 known venous thrombosis-associated recurrent mutations and polymorphisms. This multi-gene test increases the predictive power for detection of genetic susceptibility to thrombosis over 20-fold compared to single-gene analysis, in multiple ethnic populations.

Applications: (1) Rapid, cost-effective predictive test kit to identify asymptomatic individuals at risk for venous thrombosis in diverse ethnic populations; (2) Rapid, cost-effective predictive test kit to identify pregnant women at risk for thrombophilia-associated adverse pregnancy outcomes such as miscarriage, intrauterine growth restriction, preeclampsia, placental abruption, or stillbirth as well as postpartum thrombosis; (3) Provides reduction of the yearly incidence of venous thrombosis by early identification of individuals at inherited risk, allowing protection before they develop symptoms by instituting effective preventive measures, such as early thromboprophylaxis or even decisions such as avoiding the use of oral contraceptives or hormone replacement therapy; (4) Provides advantages over currently available plasma-based thrombophilia screening panel by avoiding underdetermination of anticoagulant protein deficient individuals or by avoiding high rates of false positivity; (5) Allows individualized management and anticoagulation treatment of patients according to inherited thrombophilia status.

Market: (1) Individuals before or during exposure to situations that increase the risk of venous thrombosis, such as surgery, use of oral contraceptives and/or hormone replacement therapy, trauma, bone fractures, prolonged immobilization, long air journeys, advanced age, malignancy, or combinations thereof; (2) Pregnant women, or women who plan to become pregnant, as inherited thrombophilia is a significant risk factor for adverse pregnancy outcomes such as miscarriage, intrauterine growth restriction, preeclampsia, placental abruption, stillbirth and postpartum thrombotic events.

Development Status: Validation stage.

Inventors: Cigdem F. Dogulu, Owen M. Rennert, and Wai-Yee Chan (NICHD).

Patent Status: PCT Application No. PCT/US2005/01419 filed 14 Jan 2005, which published as WO 2005/071114A1 on 04 Aug 2005 (HHS Reference No. E–282–2003/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301/435–4521; *sayyidf@mail.nih.gov.*

Dated: June 8, 2006.

David R. Sadowski,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–9302 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK K23 Grant Application Review.

Date: June 30, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mentored Career Development in Kidney Diseases.

Date: July 7, 2006.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38oz@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Carcinoembryonic Antigen Family in Immune Regulation.

Date: July 18, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5355 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, High-Density Genotyping of Diabetes and Diabetic Complications Sample Collection.

Date: July 17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Children with Digestive Disorders.

Date: July 20, 2006.

Time: 2:15 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Clinical Grants in Obesity and Nutrition.

Date: July 21, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5356 Filed 6–13–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Type 1, Diabetes and its Complications: STTR/SBIR.

Date: July 19–20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research.

Date: July 24, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5357 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Online Buprenorphine Practice Advisor for Physicians.

Date: June 15, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5358 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training in Translational Research in Neurobiology of Disease.

Date: June 15, 2006.

Time: 9 a.m. to 6 p.m

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National institute on Drug Abuse Special Emphasis Panel, Social Neuroscience.

Date: June 27–28, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5359 Filed 6–13–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, INDO–US Contraceptive Applications.

Date: June 27, 2006.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Developmental Biology Subcommittee.

Date: June 29–30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson Hotel, 1200 Sixteenth Street, NW., Washington, DC 20036.

Contact Person: Norman Change, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–1485, *changn@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, a Randomized Controlled Trial of Three Vasectomy Techniques.

Date: June 29, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: John M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, INDO–US Maternal & Child Health Applications.

Date: June 30, 2006.

Time: 9 p.m. to 10:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5360 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, adn personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Pilot-Scale.

Date: June 21, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C Craig Hyde, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN18, Bethesda, MD 20892, 301–435–3825, *ch2v@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: June 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5361 Filed 6–13–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office for Civil Rights and Civil Liberties; Interagency Coordinating Council on Individuals With Disabilities in Emergency Preparedness Quarterly Meeting

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: Notice of meeting.

SUMMARY: This provides notice of a forthcoming meeting of the Interagency Coordinating Council on Emergency Preparedness and Individuals With Disabilities (ICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The ICC will engage in discussions related to the second anniversary of Executive Order 13347 and review accomplishments and future goals of the ICC in implementation of this Executive Order. The meeting will be open and accessible to the general public.

DATES: Friday, July 14, 2006, from 10 a.m.–Noon.

ADDRESSES: Federal Communications Commission; 445 12th Street, SW., Washington, DC 20554. The meeting will be held in the Commission Meeting Room, Room #TW–C305.

FOR FURTHER INFORMATION CONTACT: Megan Hogan, 202–357–8330.

SUPPLEMENTARY INFORMATION: The ICC was established under Executive Order 13347, Individuals With Disabilities in Emergency Preparedness signed by President Bush on July 22, 2004. This Executive Order calls on the Federal Government to:

(a) Consider during emergency planning the unique needs of agency employees with disabilities and individuals with disabilities whom the agency serves;

(b) Encourage consideration of the unique needs of employees and individuals with disabilities served by State, local, and tribal governments, private organizations and individuals in emergency preparedness planning; including the provision of technical assistance, as appropriate; and

(c) Facilitate cooperation among Federal, State, local, and tribal governments, private organizations and individuals in the implementation of emergency preparedness plans related to individuals with disabilities.

The Executive Order established the ICC to coordinate activities that ensure the Federal Government appropriately supports safety and security for individuals with disabilities in all hazard situations. The ICC is chaired by the Secretary of Department of Homeland Security.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Request other reasonable accommodations for people with disabilities as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

Daniel Sutherland,

Officer for Civil Rights and Civil Liberties.

[FR Doc. E6–9299 Filed 6–13–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24126]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0080

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding one Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of their approval of the following collection of information: 1625–0080, Customer Satisfaction Surveys. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 14, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–24126] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b). By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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 may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR is available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Ms. Barbara Davis), 2100 2nd Street SW, Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICR. Comments to DMS must contain the docket number of this request, [USCG 2006–24126]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the July 14, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–24126], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 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.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as

being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. 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 in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 13859, March 17, 2006) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

Title: Customer Satisfaction Surveys.

OMB Control Number: 1625–0080.

Type Of Request: Extension of a currently approved collection.

Affected Public: Recreational boaters, commercial mariners, industry groups, and State and local governments.

Forms: None.

Abstract: Putting people first means ensuring that the Federal Government provides the highest-quality of service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public seek to meet established standards of customer service and (1) Identify the customers who are, or should be, served by the agency and (2) survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Burden Estimate: The estimated burden remains at 5,847 hours a year.

Dated: June 7, 2006.

R. T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–9231 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24127]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0071

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of their approval of the following collection of information: 1625–0071, Boat Owner's Report-Possible Safety Defect. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 14, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–24127] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System (DMS) at *http://dms.dot.gov*. (b) By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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 may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR is available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Ms. Barbara Davis), 2100 2nd Street SW, Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICR. Comments to DMS must contain the docket number of this request, [USCG 2006–24127]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the July 14, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and

address, identify the docket number for this request for comment [USCG–2006–24127], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 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.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. 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 in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 13859, March 17, 2006) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

Title: Boat Owner's Report-Possible Safety Defect.

OMB Control Number: 1625–0071.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and users of recreational boats and items of designated associated equipment.

Forms: CG–5578.

Abstract: The collection of information provides a means for consumers who believe their recreational boats or designated associated equipment contain substantial risk defects or fail to comply with Federal safety standards to report the deficiencies to the Coast Guard for investigation and possible remedy.

Burden Estimate: The estimated burden hours has increased from 10 hours to 13.2 hours a year.

Dated: June 7, 2006.

R. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–9232 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4950–FA–25, FR–4950–FA–26, FR–4950–FA–27, FR–4950–FA–28, FR–4950–FA–29, FR–4950–FA–30, and FR–4950–FA–31]

Announcement of Funding Award—Fiscal Year 2005 (FY2005); Office of Healthy Homes and Lead Hazard Control Grant Programs

AGENCY: Office of the Secretary, Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in competitions for funding under the Office of Healthy Homes and Lead Hazard Control Grant Programs Notices of Funding Availability (NOFA). This announcement contains the name and address of the award recipients and the amounts of award.

FOR FURTHER INFORMATION CONTACT: Jonnette Hawkins, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, 451 Seventh Street, SW., Room 8236, Washington, DC 20410–3000, telephone (202) 755–1785, ext. 7593. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The FY2005 awards were announced in the HUD News Release on September 21, 2005. These awards were the result of competitions announced in a **Federal Register** notice published on March 21, 2005 (70 FR 13836). The purpose of the competitions was to award grant funding for grants and cooperative agreements for the Office of Healthy Homes and Lead Hazard Control Grant Programs. Applications were scored and selected on the basis of selection criteria contained in these notices. A total of approximately $139,120,211 was awarded.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of these awards as follows:

A total of $88,210,750 was awarded to 31 grantees for the Lead Based Paint and Hazard Control Program: City of Phoenix (renewal), 200 W. Washington, 4th floor, Phoenix, AZ 85003, $3,000,000; County of Alameda (renewal), 2000 Embarcadero, Suite 300, Oakland, CA 94606, $3,000,000; City of Los Angeles, 1200 W. 7th Street, Los Angeles, CA 90017, $3,000,000; Riverside County, Dept. of Public Health, 4065 County Circle Drive, Suite 304, Riverside, CA 92503, $3,000,000; San Diego Housing Commission, 9550 Ridgehaven Court, San Diego, CA 92123, $3,000,000; City and County of Denver, 201 Colfax Avenue, Dept 29, Denver, CO 80202, $1,799,168; City of New Britain, 27 W. Main Street, New Britain, CT 06051, $3,000,000; City of New Haven, 54 Meadow Street, 9th floor, New Haven, CT 06519, $3,000,000; City of Waterbury, 95 Scovil Street, Waterbury, CT 06706, $3,000,000; City of Cedar Rapids, 1211 6th Street, SW., Cedar Rapids, IA 52404, $1,864,309; City of Marshalltown, 24 N. Center Street, Marshalltown, IA 50158, $2,275,427; City of Rock Island, 1528 Third Avenue, Rock Island, IL 61201, $1,896,834; City of Chicago (renewal), 333 S. State Street, Chicago, IL 60604, $3,000,000; Health and Hospital Corporation of Marion County, 3838 N. Rural Street, Marion, IN 46205, $2,974,839; Louisville-Jefferson County Metro Government, 527 W. Jefferson Street, Louisville, KY 40202, $2,667,659; Maine State Housing, 353 Water Street, Augusta, ME 04330, $3,000,000; Commonwealth of Massachusetts, 100 Cambridge Street, Suite 300, Boston, MA 02114, $3,000,000; City of Lowell, 50 Arcand, JFK Civic Center, Lowell, MA 01852, $3,000,000; Kansas City, Missouri Health Department, 2400 Troost Avenue, Suite 3100, Kansas City, MO 64108, $2,749,872; City of Omaha, 1819

Farnam Street, Omaha, NE 68183, $2,000,000; County of Erie, 95 Franklin Street, Buffalo, NY 14202, $3,000,000; Chautauqua County, 7 N. Erie Street, Mayville, NY 14757, $2,196,257; City of New York, 100 Gold Street, New York, NY 10038, $3,000,000; City of Akron (renewal), 177 S. Broadway Street, Akron, OH 44308, $4,000,000; City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102, $3,000,000; Houston Department of Health and Human Services, 8000 N. Stadium Drive, 2nd Floor, Houston, TX 77054, $3,000,000; City of Lynch, 900 Church Street, Lynchburg, VA 24504, $2,998,991; Commonwealth of Virginia-Dept. of Housing and Community Development, 501 N. Street, Richmond, VA 23219, $3,000,000; Vermont Housing Conversation Board, 149 State Street, Montpelier, VT 05602, $3,000,000; State of Washington, 906 Columbia Street, SW., Olympia, WA 98504, $3,000,000; City of Philadelphia, 2100 Girard Avenue, PNH Bldg. 3, Philadelphia, PA 19130, $2,999,628.

A total of $34,528,820 was awarded to 9 grantees for the Lead Hazard Reduction Demonstration Grant Program: City of Los Angeles, 1200 W. 7th Street, Los Angeles, CA 90017, $4,000,000; San Diego Housing Commission, 9550 Ridgehaven Court, San Diego, CA 92123, $4,000,000; City of Chicago, 333 S. State Street, Chicago, IL 60604, $4,000,000; Baltimore City Health Department, 210 Guilford Avenue, Baltimore, MD 21202, $2,746,574; City of Grand Rapids, MI, 1120 Monroe Avenue, Suite 360, Grand Rapids, MI 49503, $4,000,000; Hennepin County, 417 N. 5th Street, Suite 320, Minneapolis, MN 55401, $3,782,246; New York City Department of Housing & Planning & Development, 100 Gold Street, New York, NY 10038, $4,000,000; City of Philadelphia, 2100 Girard Avenue, PNH Bldg. 3, Philadelphia, PA 19130, $4,000,000; City of Memphis, 701 N. Main Street, Memphis, TN 38107, $4,000,000.

A total of $3,999,920 was awarded to 2 grantees for the Operation Lead Elimination Action Program (LEAP): Coalition To End Childhood Lead Poisoning, 10227 Wincopin, Suite 100, Columbia, MD 21044, $2,000,000; ACORN Associates, 1024 Elysian Fields Avenue, New Orleans, LA 70117, $1,999,920.

A total of $1,651,460 was awarded to 4 grantees for the Lead Technical Studies Program: University of Cincinnati, P.O. Box 6720533, Cincinnati, OH 45267–0553, $540,692; Research Triangle Institute, 3040 Cornwallis, P.O. Box 12194 RTP, NC 27709, $313,467; St. Louis University, 3556 Caroline Mall, Saint Louis, MO 63104, $197,301; City of Philadelphia, 2100 Girard Avenue, PNH Bldg. 3, Philadelphia, PA 19130, $600,000.

A total of $5,943,553 was awarded to 6 grantees for the Healthy Homes Demonstration Grant Program: Esperanza Community Housing Corporation, 2337 S. Figueroa, Los Angeles, CA 90007, $975,000; City of National City, 1243 National City Blvd., National City, CA 91950, $996,495; State of Michigan, 3423 N. MLK Jr. Blvd., BOW Bldg., Lansing, MI 48909, $989,717; Case Western Reserve University, 10900 Euclid Avenue, Cleveland, OH 44106, $983,467; Multnomah County Health Department, 426 SW. Stark, Floor 8, Portland, OR 97205, $998,874; City of Philadelphia, 2100 Girard Avenue, PNH Bldg. 3, Philadelphia, PA 19130, $1,000,000.

A total of $2,287,466 was awarded to 5 grantees for the Lead Outreach Grants Program: City of Los Angeles, 1200 W. 7th Street, Los Angeles, CA 90017, $500,000; City of Minneapolis, 250 S. 4th Street, RM 510 Minneapolis, MN 55415, $499,797; City of New York, 100 Gold Street, New York, NY 10038, $500,000; Erie County Dept. of Health, 95 Franklin Street, Buffalo, NY 14202, $500,000; Kansas City, Missouri, $287,669.

A total of $2,498,242 was awarded to 5 grantees for the Healthy Homes Technical Studies Grants Program and $365,736 to 1 grant for a FY 2004 correction: Purdue University, 302 Wood Young Street, West Lafayette, IN 47907, $221,325; Tulane University School of Public Health & Tropical Medicine, 430 Tulane Avenue, EP 15, New Orleans, LA 70112, $627,402; President & Fellows of Harvard College, 677 Huntington Avenue, Boston, MA 02115, $721,066; National Center for Healthy Housing, 10227 Wincopin, Suite 100, Columbia, MD 21044, $520,096; Saint Louis University, 3556 Caroline Mall, St. Louis, MO 63104, $408,353; Edenspace Systems Corporation (FY 2004), 15100 Enterprise Court, Suite 100, Chantilly, VA 20151–1217, $365,736.

Office of Healthy Homes.

Dated: May 26, 2006.

Jon L. Gant,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. E6–9240 Filed 6–13–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–C–01D]

Fiscal Year (FY) 2006 SuperNOFA for HUD's Discretionary Programs; Notice of Extension of Application Submission Date for Areas Affected by the President's Emergency Declaration for State of Maine, Commonwealth of Massachusetts, and State of New Hampshire

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of extension of application submission date for applicants submitting applications from areas affected by the President's Emergency Declaration for the State of Maine, Commonwealth of Massachusetts and State of New Hampshire.

SUMMARY: On January 20, 2006, HUD published its Fiscal Year FY2006, Notice of Funding Availability Policy Requirements and General Section (General Section) to the SuperNOFA for HUD's Discretionary Programs. On March 8, 2006, HUD published its FY2006, SuperNOFA, for HUD's Discretionary Grant Programs. This notice announces that HUD has extended the submission deadline date for the Community Development-Technical Assistance Program, Fair Housing Initiatives Program, Housing Choice Voucher-Family Self-Sufficiency Program, and Rural Housing and Economic Development Program NOFAs that were part of the FY2006 SuperNOFA. Specifically, this notice extends the submission deadline dates for only those applicants located in areas designated by the President as disaster areas, as the result of severe storms and flooding that began on May 12, 2006 and adversely affected areas of the State of Maine, Commonwealth of Massachusetts and State of New Hampshire. The areas included in the President's Emergency Declaration and covered by this Notice are the Maine county of York; the Massachusetts counties of Essex, Middlesex and Suffolk; and the New Hampshire counties of Belknap, Carroll, Hillsborough, Merrimack, Rockingham and Strafford. For those applicants located in one of these counties, the revised deadline date is *June 27, 2006 at 11:59:59 p.m. eastern time.* All electronic applications are available at *http://www.Grants.gov* and must be received and validated by Grants.gov by the deadline date and time. As provided by the General Section, applicants wishing to submit a hard copy application must obtain a waiver from

HUD. If the waiver is granted, applications must be received by HUD in accordance with the waiver approval notice by the deadline date and time. Applications received from areas other than those listed in the emergency declarations will not be considered. Applications received in accord with the submission requirements and not impacted by the declaration are under review and are not affected by this Notice.

DATES: The application deadline dates for the Community Development-Technical Assistance Program, Fair Housing Initiatives Program, Housing Choice Voucher-Family Self-Sufficiency Program, and Rural Housing and Economic Development Programs for applicants located in the areas designated by the President as disaster areas, as the result of severe storms and flooding that began on May 12, 2006 and adversely affected areas of the State of Maine, Commonwealth of Massachusetts and State of New Hampshire is extended to June 27, 2006.

FOR FURTHER INFORMATION CONTACT: Questions regarding the programs listed in this notice should be directed to the office or individual listed under Section VII of the individual program sections of the SuperNOFA, published on March 8, 2006.

SUPPLEMENTARY INFORMATION: On January 20, 2006, HUD published its FY2006 Notice of Funding Availability Policy Requirements and General Section (General Section) to the SuperNOFA for HUD's Discretionary Programs. On March 8, 2006, HUD published its FY2006, SuperNOFA, for HUD's Discretionary Grant Programs. On May 25, 2006, as the result of severe storms and flooding that adversely affected certain areas of the State of Maine, Commonwealth of Massachusetts, and the State of New Hampshire, the President issued an emergency declaration. The President's declaration included the Maine county of York; the Massachusetts counties of Essex, Middlesex and Suffolk; and the New Hampshire counties of counties of Belknap, Carroll, Hillsborough, Merrimack, Rockingham and Strafford. Based on the President's declaration, HUD is extending the submission deadline date for the Community Development-Technical Assistance Program, Fair Housing Initiatives Program, Housing Choice Voucher-Family Self-Sufficiency Program, and Rural Housing and Economic Development Program NOFAs that were part of the FY2006 SuperNOFA. For those applicants located in one of these counties, the revised deadline date is *June 27, 2006 at 11:59:59 p.m. eastern time.*

HUD will accept applications from applicants located in the affected counties for the programs covered by this notice in electronic format or, if granted a waiver by HUD, in hard copy submission. Request for a waiver must be sent to the program office contact listed in the original funding announcement and approved by that office. Waiver requests must be made in writing and may be submitted by e-mail provided the request is sent to HUD no later than June 20, 2006. The approval of the waiver to submit a paper application will include instructions for where to submit the application and the number of copies to submit. In accordance with the provisions of the General Section for timely receipt of applications, all applications must be received and validated by Grants.gov; or received by HUD in the case of paper application submissions, no later than the deadline date.

In order to ensure timely receipt, HUD strongly recommends applicants submit their electronic applications 48–72 hours prior to the deadline to ensure the application validation is processed prior to the deadline. If you are granted a waiver your application should be placed with a delivery service at least 24–48 hours prior to the deadline date to ensure timely receipt of paper applications before the deadline date and time. Hand deliveries will not be accepted.

Dated: June 8, 2006.

Keith A. Nelson,

Assistant Secretary for Administration.

FR Doc. E6–9328 Filed 6–13–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Grand Staircase-Escalante National Monument Advisory Committee—Notice of Renewal

AGENCY: Bureau of Land Management (BLM), Utah State Office, Interior.

ACTION: Notice of Renewal of the Grand Staircase-Escalante National Monument Advisory Committee.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's Grand Staircase-Escalante National Monument Advisory Committee.

The purpose of the Committee will be to advise Monument Managers on science and management issues and the achievement of objectives set forth in the Grand Staircase-Escalante National Monument Management Plan.

FOR FURTHER INFORMATION CONTACT: Maggie Langlas, National Landscape Conservation System (171), Bureau of Land Management, 1620 L Street, NW., Room 301 LS, Washington, DC 20236, telephone (202) 452–7787.

Certification Statement

I hereby certify that the renewal of the Grand Staircase-Escalante National Monument Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: March 30, 2006.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 06–5391 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three members to the Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than July 14, 2006.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Ramona Delorme; fax 775–861–6618.

FOR FURTHER INFORMATION CONTACT: Jeff Rawson, Division Chief, Wild Horse and Burro Division, (202) 452–0379. Individuals who use a telecommunications device for the deaf

(TDD) may contact Mr. Rawson at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Wild Free-Roaming Horses and Burros Act (16 U.S.C. 1331, *et seq.*) directs the Secretary of the Interior and the Secretary of Agriculture to appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild-free roaming horses and burros and their management and protection. Nominations for a term of three years are needed to represent the following categories of interest:

Natural Resource Management

Livestock Management

Wild Horse and Burro Research

Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters/or resumes should include the nominees': (1) Name, address, phone, and e-mail address if applicable; (2) category(s) for consideration (*i.e.* natural resource management, livestock management or wild horse and burro research; (3) present occupation; (4) explanation of qualifications to represent their designated constituency; (5) nominating organization, individual or by self; and (6) list of references and letters of endorsement by qualified individuals.

As appropriate, certain Board members may be appointed as Special Government Employees. Special Government Employees serve on the board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR part 2634. Nominations are to be sent to the address listed under **ADDRESSES**, above.

Each nominee will be considered for selection according to their ability to represent their designated constituency, analyze and interpret data and information, evaluate programs, identify problems, work collaboratively in seeking solutions and formulate and recommend corrective actions. Pursuant to section 7 of the Wild Free-Roaming Horses and Burros Act, Members of the Board cannot be employed by either Federal or State Government. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: May 1, 2006.

Ed Shepard,

Assistant Director, Renewable Resources and Planning.

[FR Doc. E6–9260 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1610–DP–011J]

Notice of Availability of Supplemental Information and Analysis for the Draft Price Resource Management Plan/ Environmental Impact Statement; Notice of Potential Areas of Critical Environmental Concern and Specific Associated Resource Use Limitations for Public Lands in Carbon and Emery Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Supplemental Information and Analysis to the Price Field Office Draft Resource Management Plan/Environmental Impact Statement (Price Draft RMP/EIS) for Areas of Critical Environmental Concern (ACECs). This information includes four potential ACECs inadvertently omitted from the Price Draft RMP/EIS and prior notices.

DATES: To assure that public comments will be considered, BLM must receive written comments on the supplemental information and impact analysis to the Price Draft RMP/EIS for the potential ACECs within 90 days following the date the Environmental Protection Agency publishes the Notice of Availability of the supplemental ACEC information in the **Federal Register**.

Public comments regarding the designation of the four potential ACECs will be accepted for 60 days (43 CFR 1610.7–2) following the date this Notice of Availability is published in the **Federal Register**.

ADDRESSES: Written comments may be submitted by mail to the Bureau of Land Management, Price Field Office, 125 South 600 West, Price, UT 84501. E-mail comments may be submitted to the following address: *UT_Pr_Comments@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Floyd Johnson, Assistant Field Manager, BLM Price Field Office, 125 South 600 West, Price, UT 84501, phone 435–636–3600, or visit the project Web site at *http://www.blm.gov/rmp/ut/price.*

SUPPLEMENTARY INFORMATION: The supplemental information provides additional documentation regarding the disposition of ACEC nominations, provides a description of the four additional potential ACECs, and analyzes any potential impacts relating to the inclusion of these ACECs in Alternative C of the Price Draft RMP/EIS. The original notice of availability for the Price Draft RMP/EIS for the Price Field Office planning area in Carbon and Emery Counties, Utah was published in the **Federal Register**, volume 69, number 136, Friday, July 16, 2004. A supplement to that Notice with information on existing and potential ACECs considered within the Price Draft RMP/EIS was published in the **Federal Register**, volume 70, number 238, Tuesday, December 13, 2005.

The Price Field Office planning area encompasses all of the public land managed by the Price Field Office in Carbon and Emery Counties, Utah. This area includes approximately 2.5 million acres of BLM-administered surface lands and 2.8 million acres of Federal mineral lands underlying Federal, State, and private surface ownership in the area. The decisions of the Price RMP will apply only to BLM-administered public lands, including Federal mineral estate.

The Price Draft RMP/EIS addresses five alternatives of proposed management decisions and analyzes the impacts of each. There are presently 13 existing designated ACECs (289,629 total acres) in the Price Field Office, which were established by the San Rafael RMP (1991). These are reflected in the No Action Alternative of the Draft RMP/EIS.

Nine potential ACECs (286,416 total acres) were considered in at least one action alternative in the Draft RMP/EIS. In some cases, the number and acres and the resource use limitations applied to the nine potential ACECs also varied by alternative. These nine potential ACECs were described in the Notice published in the **Federal Register,** volume 70, number 238, Tuesday, December 13, 2005.

In addition to the nine potential ACECs, four potential ACECs were inadvertently omitted from the Price Draft RMP/EIS released July, 2004. The four additional potential ACECs described and analyzed in the supplemental information include:

• Desolation Canyon Area—(159,246 acres) Values of concern include outstanding scenery, Fremont, Archaic and Ute cultural sites, and fisheries and wildlife habitats;

• Mussentuchit Badlands Area—(58,398 acres) Values of concern include cultural resources such as prehistoric quarrying area;

• White-Tailed Prairie Dog Complex—(9,204 acres) Values of concern include protection of habitat and other species dependent on prairie dog colonies; and

• Lower Muddy Creek Area—(29,854 acres) Values of concern include outstanding scenery and threatened and endangered plants.

These four potential ACECs are considered for designation in Alternative C of the Price Draft RMP/EIS. Potential resource use limitations related to ACEC management of all of these areas include limitations to OHV use, leasing for oil and gas, disposal of mineral materials, and locatable mineral entry. Additionally, ACEC management for the Desolation Canyon potential ACEC would exclude right-of-way (ROW) grants. The supplemental information and analysis has been prepared for public review to facilitate the inclusion of these four potential ACECs into the Price RMP/EIS. The information includes:

• The incorporation of the specific ACEC proposals, including resource use limitations, in Chapter 2:

• A description of potential impacts in Chapter 4;

• A summary of nominations matrix in Appendix 26; and

• A description of relevant and important values found in these four potential ACECs, also in Appendix 26.

Comments, including names and street addresses of respondents, will be available for public review at the Price Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety. The supplemental information is available upon request at the Price Field Office and on the Internet at the addresses provided above.

Dated: May 26, 2006.

Gene Terland,

Acting State Director.

[FR Doc. E6–9253 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110]

Notice of Intent To Prepare an Amendment to the White River Field Office Resource Management Plan and Associated Environmental Impact Statement for Oil and Gas Development, Meeker, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, notice is hereby given that the Bureau of Land Management (BLM), White River Field Office (WRFO) located in Meeker, CO, will be directing the preparation of a Resource Management Plan (RMP) Amendment and associated Environmental Impact Statement (EIS). The BLM invites the public to participate in this planning effort.

DATES: The scoping comment period will commence with the publication of this notice and will end 45 days after publication of this notice. Public meetings will be held during the scoping comment period in Meeker and Rifle, Colorado. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered, should be submitted in writing to the address below. The dates of public meetings to be held in Meeker and Rifle, Colorado will be announced through the local media, newsletters, and WRFO National Environmental Policy Act (NEPA) mailing list. The draft EIS is expected to be available for public review and comment in September 2007 and the final EIS is expected to be available early in 2008.

ADDRESSES: Written comments should be sent to: Jane Peterson, 73554 Highway 64, Meeker, Colorado 81641. Written comments, including names and addresses of respondents, will be available for public review at the offices of the BLM White River Field Office, 73554 Highway 64, Meeker, Colorado 81641, during normal working hours (7:30 a.m. to 4:30 p.m., except holidays). Submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Responses to the comments will be published as part of the Proposed Resource Management Plan/Final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Jane Peterson, WRFO Oil and Gas EIS Project Manager, at (970) 244–3027 or alternately at (970) 878–3828. E-mail can be directed to *jane_h_peterson@blm.gov* and mail can be sent to the address above.

SUPPLEMENTARY INFORMATION: The RMP Amendment proposes to modify the level of oil and gas development within the WRFO boundaries above what was anticipated in the 1997 WRFO RMP. The EIS will analyze the potential impacts of increased oil and gas development on a field office-wide level. Citizens are requested to help identify issues or concerns and to provide input on BLM's proposed action. The White River Field Office (WRFO), Meeker, Colorado, is located in northwestern Colorado primarily in Rio Blanco County, with other tracts located in Garfield and Moffat Counties and encompasses 1,455,900 acres of BLM surface estate and 365,000 acres of split mineral estate. The WRFO is experiencing unprecedented growth in the oil and gas energy program. The Energy Policy and Conservation Act (EPCA) Reauthorization of 2000 directed the Department of the Interior to produce a scientific inventory of oil and gas resources and reserves underlying Federal lands. The EPCA-generated studies of five oil and gas basins (Montana Thrust Belt, Powder River, Green River, San Juan/Paradox, and Uinta/Piceance), completed and presented to Congress in January, 2003, identified the Piceance Basin of Northwest Colorado, in which the WRFO is located, as one of five sub-basins in the continental United States with large reserves of undeveloped oil and gas energy potential. As a result of EPCA, higher oil and gas prices, and development of interstate transportation pipelines the WRFO is experiencing an oil and gas boom. The WRFO Resource Management Plan (RMP), approved in

1997, projected and analyzed a Reasonable Foreseeable Development (RFD) scenario of 1,100 oil and gas wells, with 10 acres of disturbance per well (including roads and pipelines), over a 20-year period (approximately 55 wells per year). The RFD projected that nearly 2/3 of the oil and gas development activity (or 800 wells) would take place south of Rangely, Colorado with the remaining activity dispersed throughout the remaining field office area. While this projection has been fairly accurate for the activity south of Rangely, the current and projected oil and gas activity in the Piceance Basin may soon far exceed the RFD/EIS impact analysis.

The oil and gas industry has indicated that the potential exists to develop over 13,000 oil and gas wells in the Piceance Basin over the next 20 years. The current WRFO RMP/EIS does not adequately address this projected level of oil and gas development. The BLM has identified some preliminary planning criteria to guide the development of the plan. The following planning criteria have been proposed to guide the development of the plan, to avoid unnecessary data collection and analyses, and to ensure the plan is tailored to issues. Other criteria may be identified during the public scoping process. Proposed planning criteria include the following:

- The plan will comply with all applicable laws, regulations and current policies.
- Broad-based public participation will be an integral part of the planning and EIS process.
- The plan will recognize valid existing rights.
- Environmental protection and energy production are both desirable and necessary objectives of sound land management practices and are not to be considered mutually exclusive priorities

The BLM will analyze the proposed action and no action alternatives, as well as other possible alternatives that could include alternative approaches to mitigation measures and/or conditions of approval for future oil and gas development in the planning area. Alternatives will be further defined as part of the planning process.

Vernon Rholl,

Acting Field Manager.

[FR Doc. E6–9255 Filed 6–13–06; 8:45 am]

BILLING CODE 1610–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–78568]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Utah

June 12, 2006.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), Parallel Petroleum Corporation timely filed a petition for reinstatement of oil and gas lease UTU78568 for lands in Uintah County, Utah, and it was accompanied by all required rentals and royalties accruing from March 1, 2006, the date of termination.

FOR FURTHER INFORMATION CONTACT: Douglas F. Cook, Chief, Branch of Fluid Minerals at (801) 539–4122.

SUPPLEMENTARY INFORMATION: The Lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU78568, effective March 1, 2006, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Douglas F. Cook,

Chief, Branch of Fluid Minerals.

[FR Doc. E6–9256 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–EI; WYW147440]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Summit Resources, Inc. for competitive oil and gas lease WYW147440 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147440 effective February 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–9248 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–EI; WYW147439]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Summit Resources, Inc. for competitive oil and gas lease WYW147439 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147439 effective February 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–9249 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–5870–HN]

Public Notice: Request for Nominations of Qualified Properties for Potential Purchase by the Federal Government; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is provided pursuant to Section 204 of the Federal Land Transaction Facilitation Act of 2000 (43 U.S.C. 2303) (FLTFA) of the procedures for possible acquisition of qualified properties by the Federal Government. The notice also provides information on the procedures for identifying such properties held by willing sellers and establishing a priority for the purchase of such properties.

DATES: June 14, 2006.

ADDRESSES: Nominations should be mailed to BLM Montana State Office, Attn: Dee Baxter, 5001 Southgate Drive, Billings, MT 59101–4669.

FOR FURTHER INFORMATION CONTACT: Dee Baxter, BLM Montana FLTFA Contact, at 406–896–5044, or on the internet at *dbaxter@blm.gov*.

SUPPLEMENTARY INFORMATION: The FLTFA provides for the deposit of proceeds from land sales or exchanges into a separate account in the Treasury of the United States, known as the Federal Land Disposal Account. From the amounts deposited, eighty percent (80%) or more of the funds must be used to acquire inholding property and lands adjacent to federally designated areas containing exceptional resources. The four land managing agencies participating in the FLTFA land acquisition program are the Bureau of Land Management (BLM), the Forest Service (FS), the National Park Service (NPS), and the Fish and Wildlife Service (FWS).

The four agencies have signed a national interagency memorandum of understanding (MOU) that describes the process for use of funds from the Federal Land Disposal Account and the acquisition of properties under the act. The Montana FLTFA Implementation Plan was completed on February 1, 2006.

Section 204 of FLTFA requires publication of a notice to the public of agency procedures to identify and prioritize inholdings to be acquired under the Act. To that end, the public is hereby notified of its opportunity to nominate qualified properties in the State of Montana for potential purchase by the Federal Government. The BLM is the lead agency for the public notice process regarding the nomination of properties for potential Federal acquisition.

Property nominated in response to this notice must meet the following criteria:

(1) The property must contain an exceptional resource, meaning a resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, state, or local government authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public; and

(2) The property must be an ''inholding'' or immediately adjacent to a federally designated area. An ''inholding'' is any right, title, or interest held by a non-Federal entity, in or to a tract of land that lies within the boundary of a federally designated area.

A federally designated area is defined as an area that has been set aside for special management, such as land within the boundary of:

(a) A national monument, an area of critical environmental concern, a national conservation area, a national riparian conservation area, a national recreation area, a national scenic area, a research natural area, a national outstanding natural area, or a national natural landmark managed by BLM; or

(b) A unit of the National Park System; or

(c) A unit of the national Wildlife Refuge System; or

(d) An area of the National Forest System designated for special management by Congress; or

(e) An area that is designated as wilderness under the Wilderness Act, a wilderness study area, a component of the Wild and Scenic Rivers System, or a component of the National Trails System.

Any individual, group, or governmental body may make a nomination of such lands that would benefit from public ownership. Nominations will only be considered if there is a willing seller, if acquisition of the nominated land or interest in land would be consistent with an agency approved land use plan, and if any public safety, hazardous contaminant or other liability, and land title issues present on the property can be mitigated.

The nominations will be assessed by the four agencies for public benefits and ranked in a priority order in accordance with the state plan. Items considered in the prioritization process include the date the inholding was established and the extent to which acquisition of the land will facilitate land management efficiency.

The identification of an inholding creates no obligation on the part of the landowner to convey the inholding or any obligation on the part of the United States to acquire the inholding. Land purchases under the act must be at fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions. Detailed information on the MOU, the state plan, the acquisition process, and the acquisition nomination package requirements may be obtained by contacting BLM at the above address.

Dated: May 19, 2006

Howard A. Lemm,

Acting State Director.

FR Doc. E6–9258 Filed 6–13–06; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–573]

In the Matter of Certain Portable Digital Media Players; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S.

International Trade Commission on May 15, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Creative Labs, Inc. of Milpitas, California and Creative Technology Ltd. of Singapore. Supplements to the complaint were filed on May 31, 2006, and June 1, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable digital media players by reason of infringement of claims 2–5, 7, 11–13, 15, and 16 of U.S. Patent No. 6,928,433. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 8, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable digital media players by reason of infringement of claims 2–5, 7, 11–13, 15, and 16 of U.S. Patent No. 6,928,433, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—Creative Labs, Inc., 1901 McCarthy Boulevard, Milpitas, California 95035.

Creative Technology Ltd., 31 International Business Park, Creative Resource, Singapore 609921

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Apple Computer, Inc., 1 Infinite Loop, Cupertino, CA 95014.

(c) The Commission Investigative Attorney, party to this investigation, is Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 10.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–9271 Filed 6–13–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–678, 679, 681, and 682 (Second Review)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* June 5, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On June 5, 2006, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (71 FR 10552, March 1, 2006) was adequate and that the respondent interested party group response with respect to Brazil was adequate and decided to conduct a full review with respect to the order covering stainless steel bar from Brazil. The Commission found that the respondent interested party group responses with respect to India, Japan, and Spain were inadequate. However, the Commission determined to conduct full reviews concerning stainless steel bar from India, Japan, and Spain to promote administrative efficiency in light of its decision to conduct a full review with respect to stainless steel bar from Brazil. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 9, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–9272 Filed 6–13–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 6, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (PTCE 2002–12).

OMB Number: 1210–0115.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 60.

Number of Annual Responses: 960.

Estimated Annual Time per Respondent: Approximately 14 hours.

Total Burden Hours: 855.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: PTE 2002–12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a ''trading adviser'' for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be prohibited under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To ensure that Managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent, about the cross-trading program. Initially, where plans are not invested in Funds, Managers must furnish information to plan fiduciaries about the cross-trading program, provide a statement that the Manager will have a potentially conflicting division of loyalties, and obtain written authorization from a plan fiduciary for a plan to participate in a cross-trading program. For plans that are currently invested in Funds, the Manager must provide annual notices to update the plan fiduciary and provide the plan with an opportunity to withdraw from the program. For Large Accounts, prior to the cross-trade, the Manager must provide information about the cross-trading program and obtain written authorization from the fiduciary of a Large Account to engage in cross-trading in connection with a portfolio restructuring program. Following completion of the Large Account's restructuring, information must be provided by the Manager about all cross-trades executed in connection with a portfolio-restructuring program. Finally, the exemption requires that Managers maintain for a period of 6 years from the date of each cross-trade the records necessary to enable plan fiduciaries and certain other persons specified in the exemption (*e.g.*, Department representatives or contributing employers), to determine

whether the conditions of the exemption have been met.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–9261 Filed 6–13–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''National Longitudinal Survey of Youth 1997.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 14, 2006.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1997 (NLSY97) is a nationally representative sample of persons who were born in the years 1980 to 1984. These respondents were ages 12–17 when the first round of annual interviews began in 1997; the tenth round of annual interviews is being conducted from October 2006 to May 2007. The pretest interviews for round 11 will take place in July and August 2007. The Bureau of Labor Statistics (BLS) contracts with the Center for Human Resource Research (CHRR) of the Ohio State University to implement the NLSY97 survey. The National Opinion Research Center (NORC) at the University of Chicago is responsible for interviewing these respondents on a yearly basis to study transition from schooling to the establishment of careers and families. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY97, members of the academic community publish articles and reports based on NLSY97 data for the DOL and other funding agencies. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The Bureau of Labor Statistics seeks approval to conduct round 10 of annual interviews of the NLSY97 as well as the pretest for round 11. Respondents to the NLSY97 will undergo an interview of approximately one hour during which they will answer questions about schooling and labor market experiences, family relationships, and community background.

During the fielding period for the main round 10 interviews, about 750 respondents will be asked to participate in a brief second interview to ascertain whether the initial interview took place as the interviewer reported and to assess the data quality of selected questionnaire items.

During round 10, the BLS proposes to increase respondent financial and in-kind incentives to encourage greater cooperation both in the current round and in future rounds. In addition, the BLS proposes to add a set of experimental questions near the end of the round 10 questionnaire that are designed to improve respondent engagement with and enjoyment of the survey. The experimental questions are subjective and provide respondents with an opportunity to express their opinions or feelings about various topics, in contrast to most other questions in the survey, which generally are objective and focus on behavior. The ultimate goal of the experimental questions is to encourage long-term respondent cooperation.

The BLS also proposes to add a questionnaire section that includes questions about labor force participation that also are asked in the monthly Current Population Survey. These questions previously were asked in round 4 of the NLSY97. Finally, the BLS proposes in round 10 to make a variety of minor changes to existing questionnaire sections and to remove some less vital questions to offset the additional respondent burden from the questionnaire sections that are being added.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.
Agency: Bureau of Labor Statistics.
Title: National Longitudinal Survey of Youth 1997.
OMB Number: 1220–0157.
Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Main Round 10 Interview	7,500	Annually	7,500	60	7,500
Round 10 Validation Interview	750	Annually	750	6	75
Round 11 Pretest	200	Annually	200	60	200
Totals	7,700		8,450		7,775

The difference between the total number of respondents and the total number of responses reflects the fact that 750 respondents will be interviewed twice, once in the main round 10 survey and a second time in the validation interview.

Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of June, 2006.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E6–9254 Filed 6–13–06; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''International Price Program—U.S. Export Price Indexes.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 14, 2006.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Export Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of exported products, as well as many services. The Office of Management and Budget has listed the Export Price Indexes as a Principal Federal Economic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Export Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics and are viewed as a sensitive indicator of the economic environment. The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Current Action

The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. Recently, the IPP implemented changes to reduce burden on those reporters that are major traders and account for a significant portion of trade. Field economists are provided with more accurate information about the potential overlap between establishments that are both in the IPP and the Producer Price Index in order to better coordinate visits to establishments when obtaining new items for repricing. The IPP also implemented an enhanced refinement process that provides Industry Analysts the ability to reduce the burden for a respondent when necessary and modified the second stage selection algorithm to lower the percentage of infrequently traded areas that are sampled, because they are more likely to be out-of-scope for the IPP. These improvements should reduce the overall burden on respondents and improve the IPP's overall response rate at initiation. In addition, in 2003 the IPP introduced a web application for monthly data collection. This tool allows respondents to directly update their data online via the internet. Web collection has

expanded rapidly since the IPP began soliciting respondents and as of April 2006, the Program had solicited 70 percent of all respondents, with a goal of 75 percent by September 2006, and 95 percent by September 2007. Through April 2006, nearly 40 percent of the IPP respondents are actually utilizing web collection while the majority of respondents still use the mailout/faxback process. In addition, email repricing has the possibility of expanding and over time these various electronic data collection methods for repricing will continue to allow the IPP to collect and publish monthly data in a timely manner.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
Initiation Visit (includes form 3008)	1,400	Annually	1,400	1.0	1,400
Form 3007D	2,700	Monthly	17,010	.6156	10,471
Totals	4,100		18,410		11,871

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 6th day of June, 2006.

Catherine Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E6–9257 Filed 6–13–06; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''International Price Program—U.S. Import Product Information.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 14, 2006.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Import Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1973, measure price change over time for all categories of imported products, as well as many services. The Office of Management and Budget has listed the Import Price Indexes as a Principal Federal Economic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics, and are viewed as a sensitive indicator of the economic environment. The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Current Action

The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. Recently, the IPP implemented changes to reduce

burden on those reporters that are major traders and account for a significant portion of trade. Field economists are provided with more accurate information about the potential overlap between establishments that are both in both the IPP and the Producer Price Index in order to better coordinate visits to establishments when obtaining new items for repricing. The IPP also implemented an enhanced refinement process that provides Industry Analysts the ability to reduce the burden for a respondent when necessary and modified the second stage selection algorithm to lower the percentage of infrequently traded areas that are sampled, because they are more likely to be out-of-scope for the IPP. These improvements should reduce the overall burden on respondents and improve the IPP's overall response rate at initiation. In addition, in 2003 the IPP introduced a web application for monthly data collection. This tool allows respondents to directly update their data online via the Internet. Web collection has expanded rapidly since the IPP began soliciting respondents and as of April 2006, the Program had solicited 70 percent of all respondents, with a goal of 75 percent by September 2006, and 95 percent by September 2007. Through April 2006, nearly 40 percent of the IPP respondents are actually utilizing web collection while the majority of respondents still use the mailout/faxback process. In addition, email repricing has the possibility of expanding, and over time, these various electronic data collection methods for repricing will continue to allow the IPP to collect and publish monthly data in a timely manner.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Import Product Information.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
Initiation Visit (includes form 3008)	2,000	Annually	2,000	1.0	2,000
Form 3007D	3,700	Monthly	23,680	.6507	15,409
Totals	5,700		25,680		17,409

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 6th day of June, 2006.

Catherine Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E6–9259 Filed 6–13–06; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–039)]

NASA Advisory Council; Science Committee; Science Subcommittees; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Science Subcommittees of the NASA Advisory Council (NAC). These Subcommittees report to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, July 6, 2006, 8:30 a.m. to 5:30 p.m. and Friday, July 7, 2006, 8:30 a.m. to 5:30 p.m., Eastern Daylight Time.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will feature plenary session information briefings by NASA officials on science program status and plans including Lunar science planning. The plenary session will subsequently break out into meetings of the Astrophysics Subcommittee, Earth Science Subcommittee, Heliophysics Subcommittee, Planetary Sciences Subcommittee, and Planetary Protection Subcommittee. The breakout sessions will focus on: (1) Lunar Science Workshop Planning, and (2) the NASA Science Plan.

The meeting will be open to the public up to the seating capacity of the rooms. Thirty minutes will be set aside for verbal comment by members of the general public, not to exceed three minutes per speaker, at 8:30 a.m. on July 7, 2006. Those wishing to speak must sign up at the meeting registration desk by 5:30 p.m. on July 6, 2006. Members of the public are also welcome to file a written statement at the time of the meeting. Statements may also be submitted in advance of the meeting via e-mail or fax to Ms. Norris. Statements collected in advance will be forwarded to the appropriate Subcommittee. To facilitate consideration of the comments provided, statements should be kept to two pages.

Findings and recommendations developed by the Subcommittees during their meetings will be submitted to the Science Committee of the NAC.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a visitor's register.

Dated: June 8, 2006.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E6–9268 Filed 6–13–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: June 29, 2006, 5 p.m.–5:30 p.m. EDT.

Place: Teleconference. National Science Foundation, Room 1045, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

For Further Information Contact: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To review and approve the final report from the Dark Energy Task Force.

Dated: June 9, 2006.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 06–5388 Filed 6–13–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–LR; ASLBP No. 06–849–03–LR]

Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Entergy Nuclear Operations, Inc.

(Vermont Yankee Nuclear Power Station)

A Licensing Board is being established pursuant to a March 21, 2006 notice of opportunity for hearing (71 FR 15220 (March 27, 2006)) to consider the April 27, 2006 request of the Town of Marlboro, Vermont, and the May 26, 2006 requests of the Massachusetts Attorney General, the State of Vermont Department of Public Service, and the New England Coalition, challenging the January 25, 2006 application for renewal of Operating License No. DPR–28, which authorizes Entergy Nuclear Operations, Inc. (Entergy), to operate the Vermont Yankee Nuclear Power Station. The Entergy Nuclear Operations, Inc. renewal application seeks to extend the current operating license for the facility, which expires on March 21, 2012, for an additional twenty years.

The Board is comprised of the following administrative judges:

Alex S. Karlin, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 8th day of June 2006.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E6–9252 Filed 6–13–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The Office of Management and Budget announces two meetings of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are two meetings announced in this **Federal Register** Notice. Public meetings of the Panel will be held on June 29th and July 14th 2006. These meetings are in addition to those already announced for June and July in the **Federal Register** at 71 FR 25613. All meetings will begin at 9 a.m. Eastern Time and end no later than 5 p.m. For a schedule of all confirmed meetings, please visit the Panel's Web site at *http://acquisition.gov/comp/aap/index.html* and select the link for ''Schedule.''

ADDRESSES: The June 29th meeting will be held at the General Services Administration (GSA) Auditorium at 1800 F Street, NW., Washington, DC 20405. The July 14th meeting will be held at a different facility, the General Services Administration Auditorium at 7th and D Streets, SW., Washington, DC (there is no building number but the address is 301 7th Street, SW.). This facility is across the street from the L'Enfant Plaza metro stop. Enter the building through the middle entrance on D Street. You must have a photo identification to gain access to both these facilities. The public must pre-register one week in advance for all meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meetings, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Mr. Emile Monette, AAP Staff Analyst, *in writing* at: *emile.monette@gsa.gov* or by fax at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to section 1423 of the

Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at the meetings. Any change will be announced in the **Federal Register**.

All Meetings—While the Panel may hear from additional invited speakers, the focus of these meetings will be discussions of and voting on working group findings and recommendations from selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://acquisition.gov/comp/aap/index.html* for a list of working groups). The Panel welcomes oral public comments at these meetings and has reserved one-half hour for this purpose at each meeting. Members of the public wishing to address the Panel during the meeting must contact Mr. Monette, *in writing,* as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://acquisition.gov/comp/aap/index.html* under the link for ''Working Group Reports.'' The most recent posting is from the Commercial Practices Working Group. The public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business, Interagency Contracting, and Performance-Based Acquisition Working Groups as of the date of this notice. While additional recommendations from some of these working groups are likely and adopted recommendations from other working groups will be posted as recommendations are adopted, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to *http://acquisition.gov/comp/aap/index.html* and selecting the link for ''Panel Recommendations To Date.''

(d) *Availability of Meeting Materials:* Please see the Panel's web site for any available materials, including draft agendas and minutes. Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Revised Commercial Practices Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Mr. Emile Monette, in writing (via mail, e-mail, or fax identified above for Mr. Monette) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and/or presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Mr. Monette one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format).

Please note: Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 06–5407 Filed 6–13–06; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of modification to an existing system of records.

SUMMARY: The Postal Service™ proposes to revise the existing system of records titled, ''Inspector General Investigative Records 700.300.'' It is being revised to enable the Postal Service Office of Inspector General (OIG) to meet its responsibilities under the *Inspector General Act of 1978*, as amended by the *Inspector General Act Amendments of 1988*, 5 U.S.C. App. 3 § 8G. The modifications amend an existing routine use to further clarify how OIG operations can be subject to integrity and efficiency peer reviews by other offices of Inspectors General or councils comprised of officials from other Federal offices of Inspectors General. It also permits other offices or councils to properly and expeditiously investigate allegations of misconduct by senior OIG officials as authorized by a council, the President, or Congress and to report to the council, the President, or Congress on the investigation.

DATES: The revision will become effective without further notice on July 14, 2006 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 10433, Washington, DC 20260–2200. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Privacy Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 10407, Washington, DC 20260–2200. Phone: 202–268–5959.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the *Privacy Act* requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service has reviewed its systems of records and has determined that the *Inspector General Investigative Records* system should be revised to modify an existing routine use regarding the OIG sharing information with other offices of inspector general, or councils comprised of officers from other offices of inspector general, as authorized by the President or Congress. Routine use ''d'' will be revised to provide clarification regarding how information is shared in accordance with the *Inspector General Act of 1978*, as amended.

The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights. The amendment does not change the kinds of personal information about individuals that are maintained. Rather, the amendment clarifies disclosures related to Inspector General peer reviews, including the recipients of disclosures, the legal authority, and the purpose of the disclosures. Personally identifiable information derived from other *Postal Service Privacy Act* systems will continue to be redacted prior to disclosure. Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed amendment has been sent to Congress and to the Office of Management and Budget for their evaluation.

Privacy Act System of Record USPS 700.300 was originally published in the **Federal Register** on October 15, 1998 (63 FR 55416), and amended on February 25, 2004 (69 FR 8707) and April 29, 2005 (70 FR 22516). The Postal Service proposes amending the system as shown below:

Handbook AS–353, Guide to Privacy and the Freedom of Information Act

1 Introduction

* * * * *

Appendix—Privacy Act Systems of Records

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Section C. Index of Systems of Records

Part I. General Systems

* * * * *

USPS 700.300 System Name: Inspector General Investigative Records

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

* * * * *

[*Revise Item d to read as follows:*]

d. Records originating exclusively within this system of records may be disclosed to other Federal offices of inspector general and councils comprised of officials from other Federal offices of inspector general, as required by the Inspector General Act of 1978, as amended. The purpose is to ensure that OIG audit and investigative operations can be subject to integrity and efficiency peer reviews, and to permit other offices of inspector general to investigate and report on allegations of misconduct by senior OIG officials as directed by a council, the President, or Congress. Records originating from any other USPS systems of records, which may be duplicated in or incorporated into this system, may also be disclosed with all personally identifiable information redacted.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–9221 Filed 6–13–06; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53940; File No. 4–516]

Joint Industry Plan; Order Approving Options Regulatory Surveillance Authority Plan by the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) and Philadelphia Stock Exchange, Inc.

June 5, 2006.

I. Introduction

On January 31, 2006, pursuant to Rule 608 under the Securities Exchange Act of 1934 (''Act''),[1] the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.)[2] and Philadelphia Stock Exchange, Inc. (collectively, ''Exchanges'') filed with the Securities and Exchange Commission (''Commission'') the Options Regulatory Surveillance Authority Plan, a plan providing for the joint surveillance, investigation and detection of insider trading on the markets maintained by the Exchanges (''ORSA Plan'').[3]

On April 10, 2006, a detailed summary of the ORSA Plan was published for comment in the **Federal Register**.[4] The Commission received no comments on the ORSA Plan. This Order approves the ORSA Plan as proposed pursuant to section 11A of the Act[5] and Rule 608 thereunder.[6]

II. Summary of the ORSA Plan

The purpose of the ORSA Plan is to permit the Exchanges to act jointly in the administration, operation, and maintenance of a regulatory system for the surveillance, investigation, and detection of the unlawful use of undisclosed, material information in trading on one or more of their markets. By sharing the costs of these regulatory activities and by sharing the regulatory information generated under the ORSA Plan, the Exchanges believe they will be able to enhance the effectiveness and efficiency with which they regulate their respective markets and the national market system for options. The Exchanges also believe that the ORSA Plan will avoid duplication of certain regulatory efforts on the part of the Exchanges.

A. Policy Committee

The ORSA Plan provides for the establishment of a Policy Committee, on which each Exchange will have one representative and one vote. The Policy Committee is responsible for overseeing the operation of the ORSA Plan and for making all policy decisions pertaining to the ORSA Plan, including, among other things, the following:

1. Determining the extent to which regulatory, surveillance, and

[1] 17 CFR 242.608

[2] On March 6, 2006, the Pacific Exchange, Inc. (''PCX'') filed with the Commission a proposed rule change, which was effective upon filing, to change the name of PCX, as well as several other related entities, to reflect the recent acquisition of PCX Holdings, Inc., the parent company of PCX, by Archipelago Holdings, Inc. (''Archipelago'') and the merger of the New York Stock Exchange, Inc. with Archipelago. *See* File No. SR–PCX–2006–24. All references herein have been changed to reflect these transactions.

[3] The Exchanges initially filed the ORSA Plan with the Commission on May 5, 2005. The Exchanges filed revised versions of the ORSA Plan on July 6, 2005 and September 29, 2005.

[4] *See* Securities Exchange Act Release No. 53589 (April 4, 2006), 71 FR 18120. The full text of the plan was made available to interested persons on the Commission's Web site.

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608

investigative functions will be conducted on behalf of the Exchanges;

2. Making all determinations pertaining to contracts with (i) persons who provide goods and services under the ORSA Plan, including parties to the ORSA Plan who provide such goods and services, and (ii) parties to the ORSA Plan, and other self-regulatory organizations who engage in regulatory, surveillance, or investigative activities under the ORSA Plan;

3. Reviewing and approving surveillance standards and other parameters to be used by self-regulatory organizations who perform regulatory and surveillance functions under the ORSA Plan; and

4. Determining budgetary and financial matters.

All decisions by the Policy Committee, except as otherwise indicated, will be by majority vote, subject to any required approval of the Commission. Disputes arising in connection with the operation of the ORSA Plan will be resolved by the Policy Committee acting by majority vote.

B. Delegation of Functions

The ORSA Plan permits the Exchanges, as and to the extent determined by the Policy Committee, to delegate all or part of the regulatory and surveillance functions under the ORSA Plan (other than the Policy Committee's own functions) to one or more Exchanges or other self-regulatory organizations. The Policy Committee has determined to delegate the operation of the surveillance and investigative facility contemplated by the ORSA Plan to CBOE. The Exchanges have entered into a Regulatory Services Agreement (''RSA'') with CBOE, as service provider, pursuant to which CBOE will perform certain regulatory and surveillance functions under the ORSA Plan and use its automated insider trading surveillance system to perform these functions on behalf of the Exchanges.

Although CBOE will be delegated responsibility for these activities, the ORSA Plan specifically provides that each Exchange will remain responsible for the regulation of its market and for bringing enforcement proceedings whenever it appears that persons subject to its regulatory jurisdiction may have violated the Exchange's own rules, the Act, or the rules of the Commission thereunder.

C. Review of Service Provider

The Policy Committee must periodically, but not less frequently than annually, review the performance of persons to whom regulatory and surveillance activities have been delegated under the ORSA Plan. The Policy Committee must evaluate whether such activities have been performed by the service provider in a reasonably acceptable manner consistent with any contract governing the performance of such services and whether the costs of such services are reasonable. If the Policy Committee determines that the performance of delegated activities is not reasonably acceptable or that the costs are unreasonable, the Policy Committee may terminate the delegation of activities to such persons subject to applicable contractual terms.

D. Potential Insider Trading Violations

When in the course of performing regulatory and surveillance functions the Exchanges acting under the ORSA Plan, or a self-regulatory organization to whom such functions have been delegated, obtain information indicating that there may have been an insider trading violation by members or associated persons of one or more of the Exchanges, the Exchanges or such delegatee will promptly inform all such parties of the relevant facts. The Exchanges acting jointly will not have authority to take disciplinary action against members or associated persons of any individual Exchange. All such authority will remain that of the Exchanges acting in their individual capacities.

E. Other Regulatory or Surveillance Functions

The ORSA Plan permits the Exchanges to provide for the joint performance of any other regulatory or surveillance functions or activities that the Exchanges determine to bring within the scope of the ORSA Plan, but any determination to expand the functions or activities under the ORSA Plan would require an amendment to the ORSA Plan subject to Commission approval and the requirements for amendments described below.

F. Allocation of Costs

The costs under the ORSA Plan to be allocated among the Exchanges will consist of all costs duly incurred by any Exchange as a direct result of its performing regulatory or surveillance functions under the ORSA Plan, together with any amounts charged under the ORSA Plan (or charged to any Exchange authorized to incur such charges under the ORSA Plan) by any other person for goods or services provided under the ORSA Plan. The costs incurred by CBOE in developing the insider trading surveillance system to be used by CBOE as the ORSA Plan service provider will be borne by CBOE without reimbursement. Costs incurred by CBOE in maintaining and upgrading its system going forward will be allocated among the Exchanges, provided that such costs have been authorized by the Exchanges.

Costs in each calendar quarter will be allocated among the Exchanges in accordance with a three element formula: (1) Fifty percent of costs will be allocated equally among the Exchanges (with a pro rata adjustment for any exchange that was not an Exchange for the entire calendar quarter); (ii) twenty-five percent of costs will be allocated among the Exchanges in accordance with their respective contract volume market shares during the calendar quarter; and (iii) twenty-five percent of costs will be allocated among the Exchanges in accordance with their respective numbers of classes of securities options traded at any time during the calendar quarter.

G. New Parties to the ORSA Plan; Participation Fee

Any other self-regulatory organization that maintains a market for the trading of securities options in accordance with rules approved by the Commission may become a party to the ORSA Plan, subject to agreeing to the terms and conditions of the ORSA Plan, agreeing to the terms and conditions of any contract pursuant to which the parties to the ORSA Plan have delegated regulatory and surveillance functions under the ORSA Plan, and payment of a participation fee.

The participation fee will be an amount determined by a majority of the Exchanges to be fair and reasonable compensation for the costs incurred in developing and maintaining the facilities used under the ORSA Plan and in providing for participation by the new party. In determining the amount of the participation fee, the Exchanges must consider the following factors:

1. The portion of costs previously paid for the development, expansion and maintenance of facilities used under the ORSA Plan which, under generally accepted accounting principles, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new party;

2. an assessment of costs incurred and to be incurred, if any, to accommodate the new party, which are not otherwise required to be paid by the new party; and

3. previous participation fees paid by other new parties.

If the Exchanges and a new party cannot agree on the amount of the participation fee, the matter will be subject to review by the Commission.

A self-regulatory organization that does not maintain a market for the trading of securities options may become a party to the ORSA Plan, and a self-regulatory organization that ceases to maintain such a market may continue to be a party to the ORSA Plan, only if permitted by a majority of the other parties.

H. Term and Termination

The ORSA Plan will remain in effect for so long as there are two or more parties to the ORSA Plan. Any Exchange may withdraw from the ORSA Plan at any time on not less than six months prior written notice to each of the other parties. Any Exchange withdrawing from the ORSA Plan will remain liable for its proportionate share of costs allocated to it for the period during which it was a party, but it will have no further obligations under the ORSA Plan or to any of the other Exchanges with respect to the period following the effectiveness of its withdrawal. The right of an Exchange to participate in joint regulatory services under the ORSA Plan is not transferable without the consent of the other Exchanges.

I. Amendments

The ORSA Plan may be amended by the affirmative vote of all of the parties, provided that the provisions pertaining to the allocation of costs may be amended by the affirmative vote of not less than two-thirds of the parties, subject in each case to any required approval of the Commission.

III. Discussion

In section 11A of the Act,[7] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. In particular, section 11A(a)(3)(B) of the Act[8] authorizes the Commission ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulatory a national market system (or a subsystem thereof) or one or more facilities thereof.'' Rule 608 under the Act establishes the procedures for filing, amending, and approving national market system plans.[9] Pursuant to paragraph (b)(2) of Rule 608, the Commission's approval of a national market system plan is conditioned upon a finding that the proposed plan ''is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [10] After carefully considering the ORSA Plan, the Commission finds that the ORSA Plan is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, and in furtherance of the purposes of the Act. In particular, the Commission finds that the ORSA Plan is consistent with Section 11A of the Act[11] and Rule 608 thereunder.[12]

The Commission believes that the ORSA Plan, which would permit the Exchanges to pool their resources for the regulation and surveillance of insider trading, should allow the Exchanges to more efficiently implement an enhanced surveillance program for the detection of insider trading, while eliminating redundant effort. In this regard, the Commission believes that the ORSA Plan should promote more effective regulation and surveillance of insider trading across all the options markets maintained by the Exchanges.

In approving the ORSA Plan, the Commission is authorizing the Exchanges to work together according to the procedures provided for under the ORSA Plan. The Commission is not approving or disapproving the terms of the RSA, nor is the Commission passing judgment on the surveillance performance of CBOE or the other Exchanges, acting individually or jointly under the ORSA Plan, or on the quality of their surveillance standards or any other parameters used for regulatory and surveillance functions. The ultimate responsibility and primary liability for self-regulatory failures remains with each Exchange, and the ORSA Plan does not relieve an Exchange of its obligations as a self-regulatory organization under the Act. In this regard, the ORSA Plan specifically provides that each Exchange remains responsible to enforce compliance by persons subject to its regulatory jurisdiction with its own rules, the Act, and the rules and regulations thereunder.

IV. Conclusion

It is hereby ordered, pursuant to section 11A of the Act,[13] and Rule 608 thereunder,[14] that the ORSA Plan submitted by the Exchanges is approved.

By the Commission.

Jill M. Peterson

Assistant Secretary.

[FR Doc. 06–5375 Filed 6–13–06; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] 17 CFR 242.608.

[10] 17 CFR 242.608(b)(2).

[11] 15 U.S.C. 78k–1

[12] 17 CFR 242.608

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 242.608.

SECURITIES AND EXCHANGE COMMISSION

[Release NO. 34–53950; File No. SR–Amex–2006–54]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Extend the Pilot Program for the Quote Assist Feature in the ANTE System

June 6, 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 May 23, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 958A—ANTE(e) to extend until April 30, 2007, its pilot program implementing a quote-assist feature in the Exchange's ANTE system (''Pilot Program'').

The text of the proposed rule change is available at the Exchange's Web site (*http://www.amex.com/*), the Exchange's principal office, and the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program through April 30, 2007. The quote assist feature implemented pursuant to the Pilot Program is intended to assist specialists on the Exchange in meeting their obligations to display customer limit orders immediately upon receipt.[3] Amex Rule 958A—ANTE(e) requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless one of the exceptions set forth in the rule applies. ''Immediately upon receipt'' is defined in the rule as ''under normal market conditions, as soon as practicable but not later than 30 seconds after receipt.'' [4]

The quote assist feature implemented under the Pilot Program [5] automatically displays eligible limit orders within a configurable time that can be set on a class-by-class basis by the Exchange and the specialist assigned to that class.[6] While all customer limit orders are expected to be displayed immediately, the specialist can set the quote assist feature to automatically display limit orders at or close to the end of the 30-second time frame—the maximum time frame permitted by the rule—or within a shorter time frame established by the Exchange. If the specialist fails to address the order within the applicable display period, the quote assist feature will automatically display the eligible customer limit order in the limit order book. The quote assist feature helps to ensure that eligible customer limit orders are displayed within the required time period.

Rule 958A—ANTE (e)(4) requires the specialist to maintain and keep active the limit order quote assist feature. The Specialist may deactivate the quote assist feature provided Floor Official approval is obtained. The specialist must obtain Floor Official approval as soon as practicable but in no event later than three minutes after deactivation. If the specialist does not receive approval within three minutes after deactivation, the Exchange will review the matter as a regulatory issue. Floor Officials will grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances. The Exchange will document all instances where a Floor Official has granted approval.

The Exchange notes that the quote assist feature does not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating Rule 958A—ANTE (e). However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate Rule 958A—ANTE (e) if it occurs when the specialist is not physically able to address all the eligible limit orders within the applicable time frame. The Exchange has issued a regulatory notice discussing the issue of excessive reliance on the quote assist feature.[7]

The Exchange will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules. The Exchange commits to conduct surveillance designed to detect whether specialists as a matter of course rely on the quote assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature will be reviewed by Member Firm Regulation as a possible violation of Rule 958A—ANTE (e). The Exchange runs its limit order display exception report at various display intervals in an attempt to detect a pattern that suggests undue reliance on the quote assist feature. The Exchange reports to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act [8] in general and furthers the objectives of section 6(b)(5) of the Act [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received any written comments regarding the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–54 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.

[3] *See* Amex Rule 958A—ANTE(e).

[4] *See* Amex Rule 958A—ANTE(e)(1).

[5] *See* Securities Exchange Act Releases No. 49747 (May 20, 2004), 69 FR 30344, 30347 (May 27, 2004) (approving implementation of the ANTE system, including the quote assist feature on a pilot basis); and No. 51955 (June 30, 2005), 70 FR 39812 (June 11, 2005) (extending the Pilot Program until April 30, 2006).

[6] The time frame within which limit orders must be addressed—a maximum of 30 seconds under the rule—may be set to a shorter time period by the Exchange. The specialist maintaining the quote assist feature may then use the feature to automatically display orders within a shorter time period than the time period set by the Exchange. Telephone conversation between Sudhir Bhattacharyya, Assistant General Counsel, Amex, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, June 2, 2006.

[7] *See* Amex Notice REG 2004–51, ''Rulings and Interpretations: Limit Order Display Requirement in Options; Availability and Deactivation of Quote Assist'' (December 8, 2004); *see also* Amex Notice, ''Deactivation of Quote Assist'' (June 19, 2000) (both available at *http://www.amex.com/amextrader).*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–Amex–2006–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit identifying personal information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file No. SR–Amex–2006–54 and should be submitted on or before July 5, 2006.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission believes that the propose rule change is consistent with the requirements of section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principales of trade and, in general, to protect investors and the public interest.

The Commission believes that the quote assist feature should help to ensure that eligible customer limit orders are displayed within the required time period. The Commission notes that the Exchange represents that it will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit order within the time period prescribed by Exchange rules, and that they do not reply excessively on the quote assist feature. Given this continuing surveillance, the Commission believes that extending the Pilot Program is consistent with the Act.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register.** The commission believes that accelerated approval is appropriate because it will enable the Pilot Program to continue immediately. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[12] to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register.**

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [13] that the proposed rule change (SR–Amex–2006–54) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5369 Filed 6–13–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53945; File No. SR–Amex–2006–20]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend the Annual Fee for Certain Listed Bonds and Debentures

June 6, 2006.

On March 22, 2006, the American Stock Exchange LLC (''Amex'' 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 increase the annual fee for listed bonds and debentures of companies whose equity securities are not listed on the Exchange from $3,500 to $5,000. On April 5, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. On April 24, 2006, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended was published for comment in the **Federal Register** on May 5, 2006.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular the Commission believes that the proposal is consistent with section 6(b)(4) of the Act,[5] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using it facilities.

The bonds and debentures listed on the Exchange are primarily structured debt products (*e.g.,* notes with returns tied to the performance of an underlying index, basket of commodities, *etc.*) The Exchange has asserted that the proposal would align the annual fees for listed bonds and debentures in accordance with the actual costs of delivering services and facilitating the transactions of such products, and that the annual fee for such bonds and debentures will be similar to the annual fees charged by certain other self-regulatory organizations in connection with listing similar structured products. Based on these assertions, the Commission believes that the proposed rule change is an equitable allocation of reasonable fees among issuers of the Exchange. The Commission notes that the increased fees will be assessed commencing January 2007.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2006–20), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5371 Filed 6–13–06; 8:45 am]

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[10] In approving the proposed rule, the Commission has considered the 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] *Id.*

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 53735 (April 27, 2006), 71 FR 26574.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficieincy, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43942; File No. SR–Amex–2006–38]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Locked Markets

June 5, 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 May 4, 2006, the American Stock Exchange LLC (''Amex'' 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 May 25, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit Exchange options quotations that lock the quotations of specialists, registered options traders (''ROTs''), supplemental registered options traders (''SROTs'') or remote registered options traders (''ROTs''), to be disseminated and executed after a short ''counting period.''[4] Amex seeks acclerated approval of the proposed rule change and a retroactive effective date of April 27, 2006.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to permit the Exchange's ANTE system to execute orders on locked market quotes (i.e. 2.00 bid/2.00 offer), after a short period of time. This proposal would revise current Commentary .01 to Rule 951—ANTE by eliminating the requirement that the ANTE system revise the bid or offer by at least one (1) minimum price variation so that the bid or offer does not lock the ABBO.[5] The ''counting period'' or time period that will be required for a quote(s) to exist before an execution on that quote may occur will be one (1) second.

Because in ANTE the specialist, ROTs, SROTs[6] and RROTs[7] may simultaneously enter quotes,[8] there may be instances where quotes may become locked. Under the proposal, the Exchange would disseminate the locked market and both quotations (bid and offer) would be deemed ''firm'' disseminated market quotations. Once the specialist and/or ROT, SROT, or RROT quotations become locked, a ''counting period'' would begin during which the specialist and/or ROT, SROT or RROT whose quotations are locked may eliminate the locked market. Such specialist and/or ROT, SROT or RROT would be obligated to execute orders at their disseminated quotation. During the ''counting period,'' specialists and ROTs in the trading crowd in which the option that is the subject of the locked market is traded will continue to be obligated to respond to floor brokers as set forth in Amex Rules 958—ANTE (c) and 950—ANTE (1) and would continue to be obligated for one contract in open outcry to other ROTs and specialists.[9] In addition, during the counting period all locked markets with respect to the specialist, ROTs, SROTs and RROTs will be immediately accessible and automatically executable pursuant to 933—ANTE. The ''counting period'' will be one (1) second.

If at the end of the counting period the quotations remain locked, the ANTE system would automatically execute the quotations against each other and allocate the contracts pursuant to Rule 935—ANTE. For example, if the market is 2 bid for 10 contracts and 2 offered for 20 contracts, after the ''counting period'' terminates, the ANTE system will execute the quotations against each other so that the remaining quote becomes 2 offered for 10 contracts. In addition, the quotation that is locked may be executed by another order during the ''counting period.''

The Exchange will not disseminate an internally crossed market (i.e. 2.10 bid/2.00 offer). If a specialist, ROT, SROT or RROT submits a quotation that would cross an existing quotation, the Exchange will: (i) Change the incoming quotation such that it locks the existing quotation; (ii) send a notice to the specialist, ROT, SROT, or RROT that submitted the existing quotation indicating that its quotation was crossed; and (iii) send a notice to the specialist, ROT, SROT or RROT that submitted the incoming quotation, indicating that is quotation crossed the existing quotation and was changed. Such a locked market would then be handled in accordance with proposed paragraph (a) to Commentary .01 of Rule 951—ANTE concerning locked markets. During the counting period, if the existing quotation is cancelled subsequent to the time the incoming

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Telephone conservation between Jeffrey Burns, Vice President and Associate General Counsel, Amex, and Terri Evans, Special Counsel, Division of Market Regulation, Commission, on May 30, 2006.

[5] Current Commentary .01 to Rule 951—ANTE provides that if the bid or offer of a specialist, ROT, SROT or RROT locks or crosses the Amex best bid or offer (''ABBO''), the ANTE System will either (i) revise the bid by one or more minimum price variations lower than the bid submitted or revise the offer by one or more minimum price variations higher than the offer submitted, so that the bid or offer submitted does not lock or cross the ABBO; or (ii) if the ABBO represents an off-floor limit order, the ANTE System will execute the order and allocate the trade pursuant to the post trade allocation process.

[6] ''SROT'' means a ROT that is a member organization so designated by the Exchange which is granted remote quoting rights to enter bids and offers electronically from off the Exchange's physical trading floor. *See* Amex Rule 900—ANTE(b)(50).

[7] ''RROT'' means a ROT that is member or member organization so designated by the Exchange which is awarded remote quoting rights to enter bids and offers electronically from locations other than the trading crowd where the applicable options class is traded on the Exchange's physical trading floor. *See* Amex Rule 900—ANTE(b)(51).

[8] The commencement of the Exchange's recently approved SROT and RROT programs will increase the simultaneous entry of quotes by multiple ROTs thereby increasing the likelihood of locked markets. The Exchange's SROT and RROT programs were recently approved by the Commission on April 12, 2006 and April 13, 2006, respectively. *See* Securities Exchange Act Release Nos. 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006)(order approving the SORT program) and 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (order approving the RROT program).

[9] *See* Amex Rule 958A—ANTE.

quotation is changed, the incoming quotation will be automatically restored to its original terms.

The Exchange believes that the proposal is necessary to maintaining order flow and competitiveness with the other options exchanges. Both the Chicago Board Options Exchange, Inc. (''CBOE'') [10] and the Philadelphia Stock Exchange, Inc. (''Phlx'') [11] have adopted similar proposals to execute locked markets.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act [12] in general and furthers the objectives of section 6(b)(5) [13] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

According to the Exchange, the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rulecomments@sec.gov*. Please include File Number SR–Amex–2006–38 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–Amex–2006–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–38 and should be submitted on or before July 5, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,[15] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule is consistent with Rule 602,[16] the Commission's Quote Rule. The Commission notes that during the counting period specialists, ROTs, SROTs, and RROTs whose quotes are locked would remain obligated to execute customer and broker-dealer orders eligible for automatic execution at the locked price. The Commission also notes that specialists and other market makers whose quotes are locked against each other would continue to be obligated under the Quote Rule for at least one contract to each other during the counting period. If at the end of the counting period the quotes remain locked, the quotes would execute against each other. Accordingly, the Commission believes that the proposal provides a reasonable method for specialists, ROTs, SROTs, and RROTs that lock a market to unlock the market.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the proposed rule change, as amended, is substantially similar to CBOE Rule 6.45A(d) and Phlx Rule 1082, Commentaries .02 and .03 and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with section 19(b)(2) of the Act [17] to approve the proposed rule change, as amended, on an accelerated basis effective April 27, 2006.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [18] that the proposed rule change (SR–Amex–2006–38), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5372 Filed 6–13–06; 8:45 am]

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[10] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

[11] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 242.602.

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53946; File No. SR–ISE–2006–27]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Automatic Execution of Non-Customer Orders

June 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2006, the International Securities Exchange, Inc. (''ISE'' 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 714 to provide that incoming Non-Customer Orders will not be automatically executed at prices that are inferior to the best bid or offer on another national securities exchange and to update the rule text with respect to the current handling of ''fill-or kill'' orders. The Exchange represents that this proposed rule change with respect to the handling of Non-Customer Orders requires the Exchange to implement a systems change that will be implemented by early September 2006. Therefore, this part of the proposed rule change will not be operative until such systems change is implemented.[3] The text of the proposed rule change is as follows, with deletions in [brackets] and additions in *italics.*

Rule 714. Automatic Execution of [Public Customer] Orders

(a) [Public Customer Orders to buy or sell options contracts on the Exchange] *Incoming orders that are executable against orders and quotes in the System will be executed automatically by the System; provided that such orders* will not be automatically executed by the System at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified in the System. *Public Customer Orders that are not automatically executed will be handled by the Primary Market Maker pursuant to Rule 803(c). Non-Customer Orders that are not automatically executed will be rejected automatically by the System.*

(b) Paragraph (a) shall not apply [to fill-or-kill orders or] in circumstances where a ''fast market'' in the options series has been declared on the Exchange, or where a ''fast market'' in the options series has been declared in other markets or where quotations in other markets are otherwise not firm.

* * * * *

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

Currently, ISE Rule 714 provides that Public Customer Orders[4] will not be automatically executed at a price that is inferior to the best bid or offer on another national securities exchange (''NBBO''). The Exchange proposes to amend ISE Rule 714 to clarify the language and to provide that Non-Customer Orders[5] also will not be automatically executed at prices that are inferior to the NBBO. Under the proposed rule change, ISE Rule 714 will also be amended to specify that Public Customer orders that are not automatically executed because there is a better price on another market will be handled by the Primary Market Maker,[6] while Non-Customer Orders that are not automatically executed will be rejected. Finally, the Exchange proposed to delete the provision stating that orders marked ''fill-or-kill'' can automatically be executed at prices that are inferior to the NBBO. With the adoption of the intermarket linkage rules, the Exchange modified its system so that a ''fill-or-kill'' condition would not cause orders to be automatically executed if there were a better price in another market, and this proposed rule change conforms the language of ISE Rule 714 to the Exchange's current practice.

2. Statutory Basis

The basis under the Act of this proposed rule change is the requirement under section 6(b)(5) of the Act[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will prevent Non-Customer Orders from automatically trading at prices that are inferior to the NBBO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange will issue a Regulatory Information Circular notifying members at least five days prior to the operative date of the rule change. The Exchange clarified that it intends that the operative date, rather than the effective date, will be delayed until the required systems change can be implemented. The Exchange further clarified that the delayed operative data applies only to the handling of Non-Customer Orders. These clarifications have been reflected in the preceding text pursuant to the request of the Exchange. E-mail exchange between Kathy Simmons, Deputy General Counsel, Exchange, and Kim Allen, Special Counsel, Commission, Division of Market Regulation (''Division''), on June 6, 2006 (''E-mail exchange'').

[4] Under ISE Rule 100(a)(32) and(33), a ''Public Customer'' is any person that is not a broker or dealer in securities, and a ''Public Customer Order'' is an order for the account of a Public Customer. At the Exchange's request, the Division deleted ''or entity'' from the preceding sentence, as ''entity'' isn't referred to in he Exchange's definition of ''Public Customer.'' E-Mail exchange.

[5] Under ISE Rule 100(a)(22) and (23), a ''Non-Customer'' is any person or entity that is a broker or dealer in securities, and a ''Non-Customer Order'' is an order for the account of a broker or dealer.

[6] ISE Rule 803(c) provides that a Primary Market Maker must address Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange, either (i) by executing a Public Customer Order at a price that matches the best price displayed or (ii) by sending to any other exchange(s) displaying the bet price a Linkage Order(s) according to the rules contained in chapter 19 or (iii) by executing a Public Customer Order at a price one minimum quoting increment inferior to the NBBO and contemporaneously sending a Linkage Order(s) to each exchange(s) disseminating the NBBO according to the Rules contained in Chapter 19.

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2006–27 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–ISE–2006–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–27 and should be submitted on or before July 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5370 Filed 6–13–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53948; File No. SR–ISE–2006–14]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to ISE Rule 720

June 6, 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 March 22, 2006, the International Securities Exchange, Inc. (''ISE'' 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 May 18, 2006, the ISE submitted Amendment No. 1 to the proposed rule change.[3] 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 ISE proposes to amend ISE Rule 720 (''Obvious Error Rule''). The text of the proposed rule change is below. Proposed new language is in *italics.* Proposed delitions are in [brackets].

Rule 720. Obvious Errors

The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule. *In limited circumstances, the Exchange may nullify transactions, pursuant to Supplementary Material .08 below.*

(a)–(c) No change.

(*d*) [(e)] Obvious Error Panel.

(1)–(4) No change.

Supplementary Material to Rule 720

.01–.07 No change.

.08 Unless all parties to a trade agree otherwise, Market Control may nullify a trade if all parties to a trade fail to receive a trade execution report due to a verifiable system outage.

* * * * *

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 purpose of the proposed rule change is to amend ISE Rule 720 to expand its application. Specifically, ISE proposes to expand its Obvious Error Rule to provide the Exchange with the ability, in limited circumstances, to nullify a transaction when all parties to a trade do not receive a trade execution report[4] due to a system outage. The

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–b.

[3] In Amendment No. 1, the Exchange amended proposed new supplementary Material .08 to ISE Rule 720 to state that unless all parties to a trade agree otherwise, ISE Market Control may nullify a trade if all parties to a trade fail to receive a trade execution report due to a verifiable system outage. Amendment No. 1 also clarified that the proposed rule change operates under the assumption that a trade has taken place, but due to a system outage, the parties to the trade never received a trade execution report and thus were unaware of the trade having taken place.

[4] A trade execution report is an ISE system message sent to all parties to a trade to inform them

Continued

Exchange routinely sends out trade execution reports to all Members that are parties to a trade.[5]

The ISE developed the Obvious Error Rule to address the need to handle errors in a fully electronic market where orders and quotes are executed automatically before an obvious error may be discovered and corrected by Members. The Exchange states that in formulating the Obvious Error Rule, it has weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an obvious error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. The Exchange believes that the proposed rule change would strengthen ISE's Obvious Error Rule because it would ensure that parties are not adversely affected by a trade whose terms were never fully communicated to them due to a system outage. The Exchange states that the proposed rule change reflects the Exchange's constant evaluation of the Obvious Error Rule and its fairness to all market participants. The Exchange also believes that the proposed rule change is necessary to assure that those transactions where a trade execution report is not sent to all the participants to a trade are eligible to be busted under the Obvious Error Rule.

Finally, as a matter of ''housekeeping,'' the Exchange proposes a technical correction of the numbering within ISE Rule 720 to change what is now ISE Rule 720(e) to ISE Rule 720(d).

2. Statutory Basis

The Exchange believes the proposal is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

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, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–ISE–2006–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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–IE–2006–14 and should be submitted on or before July 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5373 Filed 6–13–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53941; File No. SR–NASDAQ–2006–011]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change To Modify the Cure Period Available to an Issuer That Loses an Independent Director or Audit Committee Member

June 5, 2006.

Pursuant to section 19(b)(1) of the Secretaries Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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that a trade has been consummated. Among other things, a trade execution report contains pertinent details such as the underlying security, the price, number of contracts traded, the strike price and the expiration date.

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the cure period available to a listed issuer that loses an independent director or audit committee member within approximately six months prior to its annual meeting.[3] Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

* * * * *

4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

(a)–(b) No change.

(c) Independent Directors.

(1) A majority of the board of directors must be comprised of independent directors as defined in Rule 4200. The company must disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) those directors that the board of directors has determined to be independent under Rule 4200. If an issuer fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, the issuer shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement*; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the issuer shall instead have 180 days from such event to regain compliance.* An issuer relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstances that caused the non-compliance.

(2)–(5) No change.

(d) Audit Committee.

(1)–(3) No change.

(4) Cure Periods.

(A) No change.

(B) If an issuer fails to comply with the audit committee composition requirement under Rule 4350(d)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the issuer will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with the requirement*; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the issuer shall instead have 180 days from such event to regain compliance.* An issuer relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstances that caused the non-compliance.

(e)–(n) 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, Nasdaq 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. Nasdaq 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

Nasdaq Rule 4350 requires each listed issuer to have a majority independent board and an audit committee that consists of at least three independent members. Issuers who lose an independent board or audit committee member, either because the member ceases to be independent for reasons outside the member's reasonable control, or because a vacancy arises, are afforded a cure period. The cure period lasts until the earlier of the company's next annual shareholders' meeting or one year from the date of the event that caused the non-compliance. This cure period tracks language in Rule 10A–3 under the Act,[5] which states that a self-regulatory organization may provide a cure period to allow a director who ceases to be independent through reasons outside the audit committee member's reasonable control to remain on the audit committee ''until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.'' [6]

The cure period in Nasdaq Rules 4350(c) and 4350(d)(4)(B) has caused anomalous results.[7] For example, if a director who serves on the audit committee resigns just after the company's annual meeting, thus creating a vacancy on the board and the audit committee, the company would have almost a year to recruit a new director and regain compliance. At the other extreme, if the same situation occurs just before the company's annual meeting, the company would have only days or weeks to recruit a new director. Similarly, if a company fails to meet the majority independent board requirement because a director ceases to be independent through no fault of the director, the timing of the event causing the director to cease to be independent, in relation to the timing of the annual meeting, could result in widely varying cure periods. This can create a hardship, particularly on smaller companies, which may have more difficulty attracting and recruiting new independent directors. In addition, the annual shareholder meeting has little to do with the date by which a company can add a new independent director or audit committee member, since new board and committee members generally can be appointed by the existing board of directors without a shareholder meeting.

Given the disparate periods available under the existing cure period, Nasdaq proposes to adopt a minimum 180-day cure period in cases where within 180 days before the company's annual meeting: (i) A vacancy arises on the audit committee or board, or (ii) the company ceases to have a majority of independent directors on its board because a director loses his or her independence through no fault of the director.[8] The 180-day minimum will

[3] On January 26, 2006, the National Association of Securities Dealers, Inc. filed a similar proposal, SR–NASD–2006–10, to modify the cure period available to an issuer that loses an independent director or audit committee member. The instant proposed rule change replaces SR–NASD–2006–10, which was withdrawn on May 23, 2006, given Nasdaq's expectation that it will begin operating as a national securities exchange in the near term. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (''Exchange Approval Order'').

[4] Changes are marked to the rule text that appears in the electronic manual of The NASDAQ Stock Market, LLC found at *http://www.nasdaqtrader.com,* as amended by SR–NASDAQ–2006–007, which was effective upon filing on May 8, 2006. *See* Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195. These rules will become effective when Nasdaq fulfills certain conditions and commences operations as a national securities exchange, as set forth in the Exchange Approval Order.

[5] 17 CFR 240.10A–3.

[6] 17 CFR 240.10A–3(a)(3).

[7] Nasdaq's experience with these rules comes from its application of the identical NASD rules, under which Nasdaq has operated. *See* NASD Rules 4350(c) and 4350(d)(4)(B).

[8] This 180-day minimum period is consistent with: (i) Nasdaq's understanding that the process of recruiting and retaining an independent board

Continued

help assure adequate time for companies (particularly small to mid-size companies) who lose an independent director just before their annual meeting to conduct an appropriate search process for a qualified replacement independent director and/or audit committee member. It would not, however, shorten the compliance time for companies who fall out of compliance just after their annual meeting, since those companies will still have as long as a year to regain compliance. The 180-day minimum would not apply to allow a non-independent director to remain on the audit committee beyond the period contemplated in Rule 10A–3 under the Act; [9] this provision is codified in Nasdaq Rule 4350(d)(4)(A), which is not being modified.

Upon approval of this proposed rule change, Nasdaq will allow any company then eligible to utilize the new 180-day minimum period from the date of the vacancy or the event that caused non-compliance, even if the vacancy or non-compliance arose before the date of approval, provided that such company has not exceeded the cure period provided for in the rule as in effect prior to the proposed rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[10] in general and with section 6(b)(5) of the Act,[11] in particular, which requires that Nasdaq's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Nasdaq believes that the proposed change is consistent with these requirements in that it will facilitate transparent application of Nasdaq's rules, while allowing issuers a sufficient cure period.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, view, 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–NASDAQ–2006–011 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–NASDAQ–2006–011. 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–NASDAQ–2006–011 and should be submitted on or before July 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–5374 Filed 6–13–06; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10486 and #10487]

Indiana Disaster #IN–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated June 8, 2006.

Incident: Tornadoes and Severe Storms.

Incident Period: May 25, 2006.

Effective Date: June 8, 2006.

Physical Loan Application Deadline Date: August 7, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: March 8, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

member, particularly an audit committee member with financial expertise, can take four to five months or more; and (ii) Nasdaq's analysis of the length of time it has taken for Nasdaq listed companies that have fallen out of compliance with the independent director and/or audit committee requirements to regain compliance.

[9] 17 CFR 240.10A–3.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

Primary Counties: Pike.

Contiguous Counties: Indiana: Daviess, Dubois, Gibson, Knox, Warrick.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	7.763
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10486 C and for economic injury is 10487 0.

The State which received an EIDL Declaration # is Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 8, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. E6–9245 Filed 6–13–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Frank E. Morton, Mayor of City of Madras, at the following address: The Honorable Frank E. Morton, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On May 25, 2006, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than July 14, 2006.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 1.46 acres of airport property so the property can be sold to the business wishing to locate in the airport industrial park. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on May 25, 2006.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 06–5363 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Frank E. Morton, Mayor of City of Madras, at the following address: The Honorable Frank E. Morton, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On May 25, 2006, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than July 14, 2006.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 1.31 acres of airport property so the property can be sold to the business wishing to locate in the airport industrial park. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on May 25, 2006.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 06–5364 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Frank E. Morton, Mayor of City of Madras, at the following address: The Honorable Frank E. Morton, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On May 25, 2006, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than July 14, 2006.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 1.20 acres of airport property so the property can be sold to the business wishing to locate in the airport industrial park. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on May 25, 2006.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 06–5365 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Westerly State Airport, Westerly, RI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Rhode Island Airport Corporation's request to change a portion (2.8 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located on Airport Road in Westerly, Rhode Island and identified as a portion of Lot 19, Plat 108. Upon disposition the property will be used by the Town of Westerly as a police station. There were no federal funds used for the acquisition of the parcel.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Documents are available for review by appointment by contacting Mr. David Cloutier, Assistant Vice President, Rhode Island Airport Corporation at T.F. Green State Airport, 2000 Post Road, Warwick, Rhode Island, Telephone 401–737–4000, Ext. 246 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts, on May 30, 2006.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 06–5367 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held June 27, 2006 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site: *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The revised agenda will include:

- June 27:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting).
- Publication Consideration/Approval:

- Final Draft, Change 1 to DO–260, *Minimum Operational Performance Standards for 1090 MHz Automatic Dependent Surveillance-Broadcast (ADS–B)*, TRCA Paper No. 102–06/PMC–448, prepared by SC–186.
- Final Draft, Change 1 to DO–260A, *Minimum Operational Performance Standards for 1090 MHz Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services (TIS–B)*, RTCA Paper No. 103–06/PMC–449, prepared by SC–186.

- Discussion:
  - SC–205—Software Considerations.
  - Review Current Status of Committee Activities.
  - Discussion—Logistics and Document Issues.
  - Lithium Batteries Discussion—Possible New Committee.
  - Special Committee Chairman's Report.
- Action Item Review:
  - Synthetic Vision Systems (SVS)—Discussion—Possible New Committee Request.
  - SC–147—Traffic Alert & Collision Avoidance System—Discussion—Updates.
  - SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Schedule.
  - Review Current Status and Actions Taken to Expedite Progress.
  - Cabin Management Systems—Report—PMC CMS Subgroup.
  - Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on June 1, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–5368 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Minnesota Transportation Museum, Inc

[Docket Number FRA–2006–24774]

The Minnesota Transportation Museum (MTM) seeks a waiver of compliance from certain provisions of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.* Specifically, § 232 Appendix B, part 232, prior to May 31, 2001, § 232.17(b)(2) for passenger car maintenance requirements.

MTM is a non-profit corporation that operates a historical and excursion train as the Osceola and St. Croix Valley Railway between Dresser, Wisconsin and Withrow, Minnesota, a distance of 25 miles, over Canadian National track. Operation of this train is from mid-April to the end of October on Thursdays, Saturdays and Sundays, for a total of approximately 70 operating days. MTM currently operates one passenger coach equipped with LN type brakes that requires a clean, oil, test and stencil (COT&S) every 12 months, as prescribed in the Manual of Standards and Recommended Practices of the Association of American Railroads, S–045, last published in 1984. MTM is requesting that a waiver be granted to extend the COT&S time period from 12 months to 24 months. This would give MTM the ability to operate for two operating seasons between COT&S events, which would also provide a savings of $244 per year in COT&S costs for this non-profit organization.

MTM declares that safety will not be compromised if this waiver is granted, based on their 15+ years of experience with the LN type brake. MTM states that previous COT&S events have found the lubricant to be fresh with no detectable signs of deterioration. MTM also notes that since the LN brake was developed in the 1920's, there has been considerable improvement in lubricant quality and considerable improvement in all of the flexible gasket and ''O'' ring type materials that makes up the LN Brake.

Interested parties are invited to submit written comments to FRA. All written communications concerning this petition should identify the appropriate docket number (*e.g.*, Docket Number FRA–2006–24774) and must be submitted in triplicate to the Associate Administrator for Safety, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590–0001. Comments received within 45 days of the date of this notice will be considered by FRA before any final action is taken. Although FRA does not anticipate scheduling a public hearing in connection with these proceedings, if any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) at *http://dms.dot.gov.*

Issued in Washington, DC, on June 9, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–9277 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–24324; Notice 2]

American Honda Motor Company, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

American Honda Motor Company, Inc. (Honda) has determined that certain vehicles that it produced in 2005 and 2006 do not comply with S3.1.4.1 of 49 CFR 571.102, Federal Motor Vehicle Safety Standard (FMVSS) No. 102, ''Transmission shift position sequence, starter interlock, and transmission braking effect.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Honda has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR

part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on April 7, 2006, in the **Federal Register** (71 FR 17952). NHTSA received no comments.

Affected are a total of approximately 2,641 model year 2006 Honda Ridgeline vehicles. S3.1.4.1 of FMVSS No. 102 requires,

[I]f the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist: (1) The ignition is in a position where the transmission can be shifted; or (b) The transmission is not in park.

Honda explains the noncompliance as follows:

* * * American Honda offered, as an optional part, through its dealers, a wiring harness as part of a trailer towing kit. The wiring harness included a circuit to provide for back-up lights, if present on a trailer, to illuminate when the transmission was shifted into reverse gear. The Ridgeline utilizes an electronic display in the instrument panel to indicate transmission gear position. When the wiring harness in question has been installed, and the ignition key is turned to the accessory position, the electronic display indicates not only the actual position of the selected gear, but also illuminates the reverse position indicator in the display, such that there are two indicator lights lighted at the same time, unless the reverse position is the gear selected, in which case only the reverse position indicator will be lighted.

Honda has corrected the problem that caused these errors so that they will not be repeated in future production.

Honda believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Honda states that neither the actual function of the transmission nor the transmission lockout will be affected. Honda states that there is no possibility of danger from the noncompliant display while the key is in the accessory position. Honda states:

The key cannot be removed, the vehicle cannot start, and the actual gear position would be illuminated, as well as the reverse position. There are two possible scenarios to consider.

In the first and most common scenario, if the key had been removed, upon initial insertion of the key, the vehicle would have had to be in ''PARK,'' and turning the key to the accessory position will illuminate both the ''PARK'' and ''REVERSE'' indications, but not allow the vehicle to be shifted from the ''PARK'' position. Then, when the key was turned to the ''on'' position, allowing the vehicle to be shifted from the ''PARK'' position, the gear position indicator would function properly.

In the second scenario, if the key has been left in the ignition while in a gear other than ''PARK,'' when the operator turns the key to the accessory position, the electronic display will indicate the correct gear, as well as reverse. This would be a highly unusual circumstance, and the vehicle would not start unless the key was turned to the ''on'' position, in which case the gear position indicator would function properly. Nor could the key be removed until the shift lever was placed in the ''PARK'' position. Even if this highly unlikely situation were to occur, movement of the shift lever would indicate the correct gear, as well as the illumination of the reverse gear. It would become readily apparent to the operator that the illumination of the reverse gear would be inappropriate and not indicative of the actual gear being engaged. Again, once the ignition is turned to the ''ON'' position, the gearshift indicator would function completely normally. At no time would the engine operate while in the ''ACCESSORY'' position.

NHTSA agrees with Honda that the noncompliance is inconsequential to motor vehicle safety. In the ''accessory'' position, which is when the noncompliant display appears, the key cannot be removed and the vehicle cannot start. When the key is turned to the ''on'' position, the gear position indication functions properly and is in compliance. The noncompliance does not affect the function of the transmission or the transmission lockout.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Honda's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: June 9, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–9278 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24928; Notice 1]

Continental Tire North America, Receipt of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America (Continental) has determined that certain tires it produced in 2004 and 2005 do not comply with S5.5(f) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, ''New pneumatic radial tires for light vehicles.'' Continental has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Continental's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 2,627 model 235/55R17 99H Conti Pro Contact replacement tires manufactured during 2004 and 2005. S5.5(f) of FMVSS No. 139 requires the actual number of plies in the tread area to be molded on both sidewalls of each tire. The noncompliant tires are marked on the sidewall ''TREAD PLIES 1 RAYON + 2 STEEL + 2 NYLON'' whereas the correct marking should be ''TREAD PLIES 1 RAYON + 2 STEEL + 1 NYLON.''

Continental Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Continental Tire states,

All other sidewall identification markings and safety information are correct. This noncompliant sidewall marking does not affect the safety, performance and durability of the tire; the tires were built as designed.

Continental has corrected the problem that caused these errors so that they will not be repeated in future production.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing

the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 14, 2006.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: June 8, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–9244 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–24137; Notice 2]

General Motors Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 2006 model year Cadillac XLR vehicles do not comply with S7.8.2.1(c) of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on April 5, 2006, in the **Federal Register** (71 FR 17159). NHTSA received no comments.

Affected are a total of approximately 1,074 model year 2006 Cadillac XLR vehicles produced between July 26, 2005 and November 3, 2005. S7.8.2.1(c) of FMVSS No. 108 requires that if visually/optically (VO) aimable headlamps are equipped with a horizontal adjustment mechanism, then the mechanism must meet the applicable headlamp aim requirements in S7.8.5.2. That standard requires that a headlamp system that is capable of being aimed include a Vehicle Headlamp Aiming Device that includes the necessary references and scales to assure correct aim and that a label containing aiming instruction be affixed adjacent to the device. The noncompliant headlamps are equipped with a horizontal adjustment but do not meet the S7.8.5.2 requirements. GM explains that during the assembly process the horizontal adjuster is supposed to be disabled but in the case of the subject lamps, the disabling was not done. GM has corrected the problem that caused these errors so that they will not be repeated in future production.

GM believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. GM offers several bases for this assertion.

First, GM states that the location of the horizontal adjuster makes it difficult to access, because it is recessed six inches behind the opening under the top of the fender and there is no information in the owner's manual indicating the location.

Second, GM states that the horizontal adjuster requires a different tool than the vertical adjuster, a tool which is not commonly available to the public.

Third, GM states that the lamps are properly aimed and the need for re-aiming is unlikely. GM explains that VO headlamps have a wider beam pattern, making horizontal aiming unnecessary, supported by the fact that GM is not aware of warranty claims or customer complaints regarding the headlamps' horizontal aim.

Fourth, GM states that it is unlikely that owners will try to adjust headlamp aim for the following reasons. The owner's manual instructs drivers to take the vehicle to the dealer if the lamps need to be re-aimed, a four-year 50,000 mile warranty on the vehicle makes it more likely that owners will seek to have any adjustments performed by the dealer, the wide beam reduces the need for headlamp adjustment, and it is unlikely that luxury car customers would make their own repairs.

Fifth, GM asserts that it is unlikely that dealers will try to horizontally adjust the lamps because they are not aware of the horizontal adjustment. Instead, dealers are likely to replace lamps that develop an incorrect horizontal aim.

Sixth, GM states that the lamps are designed to compensate for build variation and vehicle repair, and it conducted additional testing which it believes validates that road vibration will not result in the lamps being out of aim.

Seventh, GM states that it is not aware of crashes, injuries, complaints, or field reports related to the noncompliance.

NHTSA agrees with GM that the noncompliance is inconsequential to motor vehicle safety. The only possible safety risk is that someone could locate and improperly adjust the horizontal adjustment mechanism. That risk is extremely small. The location of the horizontal adjuster makes it difficult to access and there is no information in the owner's manual or given to the dealer which indicates the location. Further, the lamps are properly aimed and the need for re-aiming is unlikely since these headlamps have a wider beam pattern which makes horizontal aiming unnecessary. In addition, as GM points out, it is unlikely that owners will try to adjust the headlamp aim since the owner's manual instructs drivers to take the vehicle to the dealer if the lamps need to be re-aimed, and a four-year, 50,000-mile warranty on the vehicle makes it more likely that owners will seek to have any adjustments performed by the dealer. Because dealers are generally not aware that the horizontal aim can be adjusted, they are likely to replace the lamps that may need adjustment. Moreover, to the extent this notice increases awareness on the part of owners or dealers that the horizontal adjustment mechanism is present on these vehicles, the notice will also inform them that any horizontal adjustment issue should be addressed by replacing the lamps and/or contacting GM.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, GM's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: June 9, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–9279 Filed 6–13–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34880]

Union Pacific Railroad Company—Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line between BNSF milepost 0.69 near Portland, OR, and BNSF milepost 8.1 near North Portland Junction, OR, a distance of approximately 7.41 miles.

The transaction was scheduled to be consummated on or after June 1, 2006, but consummation could lawfully occur no earlier than June 2, 2006, the effective date of the exemption (7 days after the exemption was filed).[1]

The purpose of the trackage rights is to create an additional overhead routing for UP trains in the Portland, OR area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34880, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 7, 2006.

[1] A decision served on June 5, 2006, denied a petition to stay the operation of the notice of exemption filed by John D. Fitzgerald, for and on behalf of the United Transportation Union—General Committee of Adjustment. Dennis R. Pierce filed a letter on June 5, 2006, on behalf of the Brotherhood of Locomotive Engineers and Trainmen—General Committee of Adjustment in support of the stay request of Mr. Fitzgerald.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–9250 Filed 6–13–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 8, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 14, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0996.

Type of Review: Extension.

Title: Required Distributions From Retirement Plans.

Description: The regulations relate to the required minimum distributions from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

Respondents: State, local, or tribal governments, not-for-profit institutions.

Estimated Total Burden Hours: 8,400 hours.

OMB Number: 1545–1480.

Type of Review: Extension.

Title: Hedging Transactions.

Description: The information is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting his or her business hedging transactions.

Respondents: Business or other for-profit institutions.

Estimated Total Burden Hours: 171,050 hours.

OMB Number: 1545–1541.

Type of Review: Extension.

Title: Revenue Procedure 97–27, Changes in Methods of Accounting.

Description: The information requested in sections 6, 8, and 13 of Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change his or her method of accounting and the terms and conditions of that change.

Respondents: Business or other for-profit institutions, individuals or households, not-for-profit institutions, and farms.

Estimated Total Burden Hours: 9,083 hours.

OMB Number: 1545–0770.

Type of Review: Extension.

Title: Transfers of Securities Under Certain Agreements.

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify non-recognition treatment of gain or loss on the exchange of securities.

Respondents: Business or other for-profit and non-profit institutions, individuals and households.

Estimated Total Burden Hours: 9,781 hours.

OMB Number: 1545–0239.

Type of Review: Extension.

Title: Statement by Person(s) Receiving Gambling Winnings.

Form: Form 5754.

Description: Section 3402(q)(6) of the Internal Revenue Code requires a statement by persons receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. The IRS uses the information on Form W–2G to ensure that recipients are properly reporting their income.

Respondents: Business or other for-profit and non-profit institutions, individuals and households, not-for-profit institutions.

Estimated Total Burden Hours: 40,800 hours.

OMB Number: 1545–1820.

Type of Review: Extension.

Title: Revenue Procedure 2003–33, Section 9100 Relief for 338 Elections.

Description: Pursuant to 301.9100–3 of the Procedure and Administration Regulations, this procedure grants certain taxpayers an extension of time to file an election described in 338(a) or 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Respondents: Business or other for-profit and non-profit institutions, individuals and households.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1545–1035.

Type of Review: Extension.

Title: Recapture of Low-Income Housing Cost.

Description: Internal Revenue Code Section 42 permits owners of residential projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.

Respondents: Business or other for-profit institutions, individuals and households.

Estimated Total Burden Hours: 7,842 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–9273 Filed 6–13–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''International Regulation—Part 28.'' The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: Comments must be received by July 14, 2006.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0102, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0102, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: International Regulation—Part 28.

OMB Number: 1557–0102.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

12 CFR part 28 contains the following collections of information:

12 CFR 28.3 Filing Requirements for Foreign Operations of a National Bank—Notice Requirement: A national bank shall notify the OCC when it:

- Files an application, notice, or report with the FRB to establish or open a foreign branch, or acquire or divest of an interest in, or close, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization.
- Opens a foreign branch, and no application or notice is required by the FRB for such transaction.
- Files an application to join a foreign exchange, clearinghouse, or similar type of organization.

In lieu of a notice, the OCC may accept a copy of an application, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC. A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

12 CFR 28.12(a) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal branch or agency—Approval and Licensing Requirements: A foreign bank shall submit an application to, and obtain prior approval from the OCC before it establishes a Federal branch or agency, or exercises fiduciary powers at a Federal branch (a foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date).

12 CFR 28.12(e)(2) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal branch or agency—Written Notice for Additional Intrastate Branches or Agencies: A foreign bank shall provide written notice to the OCC 30 days in advance of the establishment of an intrastate branch or agency.

12 CFR 28.12(h) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—After-the-fact Notice for Eligible Foreign Banks: A foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing bank subsidiary, branch, or agency, shall provide after-the-fact notice within 14 days of the transaction to the OCC if (1) the resulting bank is an ''eligible foreign bank'' within the meaning of § 28.12(f) and (2) no Federal branch established by the transaction is insured.

12 CFR 28.12(i) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—Contraction of Operations: A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch of a Federal agency.

12 CFR 28.14(c) Limitations Based upon Capital of a Foreign Bank—Aggregation: A foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

12 CFR 28.15(d), (d)(2), and (f) Capital Equivalency Deposits: Deposit arrangements:

- A foreign bank should require its depository bank to segregate its capital

equivalency deposits on the depository bank's books and records.

• The funds deposited and obligations that are placed in safekeeping at a depository bank to satisfy a foreign bank's capital equivalency deposit requirement must be maintained pursuant to an agreement prescribed by the OCC that shall be a written agreement entered into with the OCC.

Maintenance of capital equivalency ledger account: Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

12 CFR 28.15(d)(1) Capital Equivalency Deposits—Deposit Arrangements: A foreign bank's capital equivalency deposits may not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC, but in no event below the statutory minimum.

12 CFR 28.16(c) Deposit-taking by an Uninsured Federal branch—Application for an Exemption: A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

• The types, sources, and estimated amount of such deposits and explain why the OCC should grant an exemption;

• How the exemption maintains and furthers the policies described in paragraph (a) of this section.

12 CFR 28.16(d) Deposit taking by an uninsured Federal branch—Aggregation of deposits: A foreign bank that has more than one Federal branch in the same state may aggregate deposits in all of its Federal branches in that state, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

12 CFR 28.17 Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Notice of Change in Activity or Operations: A Federal branch or agency shall notify the OCC if it changes its corporate title; changes its mailing address; converts to a state branch, state agency, or representative office; or the parent foreign bank changes the designation of its home state.

12 CFR 28.18(c)(1) Recordkeeping and Reporting—Maintenance of Accounts, Books, and Records: Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations.

28.20(a)(1) Maintenance of Assets—General Rule: The OCC may require a foreign bank to hold certain assets, with the approval of the OCC, in the state in which its Federal branch or agency is located.

12 CFR 28.22 (b) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Voluntary Liquidation: Notice to customers and creditors—A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

12 CFR 28.22(e) Reports of Examination: The Federal branch or agency shall send the OCC certification that all of its Reports of Examination have been destroyed or return its Reports of Examination to the OCC.

12 CFR 28.25(a) Covered under Information Collection 1557–0014 (Comptroller's Licensing Manual) Change in Control—After-the-fact Notice: A foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

12 CFR 28.52 Covered under Information Collection 1557–0081 (MA)—Reports of Condition and Income (Interagency Call Report), FFIEC 031, FFIEC 041 Allocated Transfer Risk Reserve: A banking institution shall establish an allocated transfer risk reserve for specified international assets when required by the OCC.

12 CFR 28.53 Accounting for Fees on International Loans: Sets forth restrictions on fees and specifies accounting treatment for international loans.

12 CFR 28.54 Covered under Information Collection 1557–0100 Country Exposure Report and Country Exposure Information Report (FFIEC 009, FFIEC 009a) Reporting and Disclosure of International Assets: A banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets. A banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 79.

Estimated Total Annual Responses: 117.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,661.5.

All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 8, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E6–9229 Filed 6–13–06; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under the Public Law 92–

463 (Federal Advisory Committee Act) that a subcommittee of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. on August 1, 2006 at the Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC. The subcommittee meeting will focus on evaluating Pharmacogenomics Analysis Laboratory proposals submitted by VA investigators.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of center-based research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meeting will be open to the public for approximately one hour at the start of its meeting to discuss the general status of the program. The remaining portion of the meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, and reference to staff and consultant critiques of research protocols. During this portion of the subcommittee meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meeting and a roster of the members of the subcommittee should contact LeRoy G. Frey, PhD., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 254–0288.

Dated: June 2, 2006.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–5352 Filed 6–13–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 71, No. 114

Wednesday, June 14, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement for the White River Minimum Flow Reallocation Study, AR

Correction

In notice document 06–5057 beginning on page 32060 in the issue of Friday, June 2, 2006, make the following corrections:

1. On page 32060, in the second column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the last line, the e-mail address should read ''*mike.l.biggs@swl02.usace.army.mil*''.

2. On the same page, in the same column, under the heading **SUPPLEMENTARY INFORMATION**, in the 22nd line from the bottom, ''Forsythia'' should read ''Forsyth''.

[FR Doc. C6–5057 Filed 6–13–06; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[ET Docket No. 00–258; WT Docket No. 02–353; FCC 06–45]

Advanced Wireless Service

Correction

In rule document 06–4769 beginning on page 29818 in the issue of Wednesday, May 24, 2006, make the following correction:

PART 27—[Corrected]

On page 29835, in the second column, the heading ''**Subpart L—1710–1755 MHz, 2160–2180 MHz Bands**'' should read ''**Subpart L—1710–1755 MHz, 2110–2155 MHz, 2160–2180 MHz Bands**''.

[FR Doc. C6–4769 Filed 6–13–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

Correction

In notice document 06–4937 beginning on page 31336 in the issue of Thursday, June 1, 2006, make the following correction:

On page 31340, the graphic shown is a duplication of a graphic first found on page 31339.

[FR Doc. C6–4937 Filed 6–13–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 14, 2006

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0475; FRL–8181–3]

RIN 2060–AK14

National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: In 1994, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI). This rule is commonly known as the hazardous organic NESHAP (HON) and established maximum achievable control technology (MACT) standards to regulate the emissions of organic hazardous air pollutants (HAP) from production processes that are located at major sources.

The Clean Air Act (CAA) directs EPA to assess the risk remaining (residual risk) after the application of the MACT standards and to promulgate additional standards if required to provide an ample margin of safety to protect public health or prevent adverse environmental effect. The CAA also requires us to review and revise MACT standards, as necessary, every eight years, taking into account developments in practices, processes, and control technologies that have occurred during that time.

Based on our findings from the residual risk and technology review, we are proposing two options (to be considered with equal weight) for emissions standards for new and existing SOCMI process units. The first proposed option would impose no further controls, proposing to find that the existing standards protect public health with an ample margin of safety and prevent adverse environmental impacts, as required by section 112(f)(2) of the CAA and would satisfy the requirements of section 112(d)(6). The second proposed option would provide further reductions of organic HAP at certain process units by applying additional controls for equipment leaks and by controlling some storage vessels and process vents that are uncontrolled under the current rule. This option would also protect public health with an ample margin of safety and prevent adverse environmental impacts, as required by section 112(f)(2) of the CAA and would satisfy the requirements of section 112(d)(6). Under this option, we are proposing that the compliance deadlines for additional promulgated requirements would be one to three years from the date of promulgation.

DATES: *Comments.* Written comments must be received on or before August 14, 2006.

Public Hearing. If anyone contacts EPA by July 5, 2006 requesting to speak at a public hearing, a public hearing will be held on July 14, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0475, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- *Hand Delivery:* Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20014. Such deliveries are accepted only during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0475. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with a 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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing: If a public hearing is held, it will be held at 10 a.m. at the Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed rule, contact Mr. Randy McDonald, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number (919) 541–5402; fax number (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov.* For questions on the residual risk analysis, contact Mr. Mark Morris, EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C404–01), Research Triangle Park, NC 27711; telephone number (919) 541–5416; fax number (919) 541–0840; e-mail address: *morris.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the proposed rule are SOCMI facilities that are major sources of HAP emissions. The proposed rule would affect the following categories of sources:

Category	NAICS [1] code	Example of potentially regulated entities
Industry ...	325	Chemical manufacturing facilities.

[1] North American Industrial Classification Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. To determine whether your facility would be regulated by the proposed rule, you should carefully examine the applicability criteria in 40 CFR 63.100 of the rule. If you have any questions regarding the applicability of the proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Randy McDonald, Coatings and Chemicals Group, Sector Policies and Programs Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov,* at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing also must call Mr. Randy McDonald to verify the time, date, and location of the hearing. A public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed amendments.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Organization of this Document. The information presented in this preamble is organized as follows:

I. Background

A. What is the statutory authority for regulating hazardous air pollutants?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate national performance or technology-based emission standards for those sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as MACT standards. We published the MACT standards for SOCMI on April 22, 1994 at 59 FR 19402 (codified at 40 CFR part 63, subparts F, G, and H). The EPA is then required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes and control technologies)'' no less frequently than every eight years, under CAA section 112(d)(6).

The second stage in standard-setting is described in CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, thereby triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) requires us to determine for source categories subject to certain section 112(d) standards whether the emissions limitations protect public health with an ample margin of safety. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health. The EPA must also adopt more stringent standards if necessary to prevent adverse environmental effect (defined in section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What are SOCMI facilities?

The SOCMI is a segment of the chemical manufacturing industry that includes the production of many high-volume organic chemicals. The products of SOCMI are derived from approximately 10 petrochemical feedstocks. Of the hundreds of organic chemicals that are produced by the SOCMI, some are final products and some are the feedstocks for production of other non-SOCMI chemicals or synthetic products such as plastics, fibers, surfactants, pharmaceuticals, synthetic rubber, dyes, and pesticides. Production of such non-SOCMI end products is not considered to be part of SOCMI production and, as a result, the current MACT standards do not (and the proposed standards would not) apply to downstream synthetic products industries, such as rubber production or polymers production, that use chemicals produced by SOCMI processes.

The HON currently applies to chemical manufacturing process units (CMPUs) that: (1) Are part of a major source as defined in CAA section 112; (2) produce as a primary product a SOCMI chemical listed in table 1 of 40 CFR part 63, subpart F; and (3) use as a reactant or manufacture as a product, by-product, or co-product one or more of the organic HAP listed in table 2 of 40 CFR part 63, subpart F.

The HON defines a CMPU as the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. For purposes of the HON, a CMPU includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A CMPU includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

A SOCMI plant site can have several CMPUs, which could produce totally separate and non-related products. In the background information document for the HON, it was estimated that there were 729 CMPUs nationwide. Two hundred thirty-eight facilities have been identified as subject to the HON. These HON facilities were identified after extensive review of facility lists compiled by the EPA's Office of Enforcement and Compliance Assurance, EPA Regional Offices, and the American Chemistry Council (ACC).

The five kinds of HAP emission points that are currently regulated by the HON are storage vessels, process vents, wastewater collection and treatment operations, transfer operations, and equipment leaks. Each emission source type is briefly described below.

1. Storage Vessels

Storage vessels contain chemical raw materials, products, and co-products. Different types of vessels are used to store various types of chemicals. Gases (chemicals with vapor pressures greater than 14.7 pounds per square inch absolute (psia)) are stored in pressurized vessels that are not vented to the atmosphere during normal operations. Liquids (chemicals with vapor pressures of 14.7 psia or less) are stored in horizontal, fixed roof, or floating roof tanks, depending on chemical properties and volumes to be stored. Liquids with vapor pressures greater than 11 psia are typically stored in fixed roof tanks that are vented to a control device. Volatile chemicals with vapor pressures up to 11 psia are usually stored in floating roof tanks because such vessels have lower emission rates than fixed roof tanks within this vapor pressure range.

Emissions from storage vessels typically occur as working losses. As a storage vessel is filled with chemicals, HAP-laden vapors inside the tank become displaced and can be emitted to the atmosphere. Also, diurnal temperature changes result in breathing losses of organic HAP-laden vapors from storage vessels.

2. Process Vents

Many unit operations at SOCMI facilities generate gaseous streams that contain HAP. These streams may be routed to other unit operations for additional processing (*i.e.*, a gas stream from a reactor that is routed to a distillation unit for separation) or may be vented to the atmosphere. Process vents emit gasses to the atmosphere, either directly or after passing through recovery and/or control devices. The primary unit operations in a SOCMI unit from which process vents originate are reactor and air oxidation process units, and from the associated product recovery and product purification devices. Product recovery devices include condensers, absorbers, and adsorbers used to recover products or co-products for use in a subsequent process, for use as recycle feed, or for sale. Product purification devices include distillation operations. The HON applies only to process vents that are associated with continuous (non-batch) air oxidation, other reactor processes, or distillation unit operations within a SOCMI process unit.

3. Process Wastewater

For some synthetic organic chemicals, the manufacturing process generates wastewater streams that contain HAP. Sources of wastewater include: Water formed during the chemical reaction or used as a reactant in a process; water used to wash impurities from organic products or reactants; water used to cool organic vapor streams; and condensed steam from vacuum vessels containing organics. Organic compounds in the wastewater can volatilize and be emitted to the atmosphere from wastewater collection and treatment units if these units are open or vented to the atmosphere. Potential sources of HAP emissions associated with wastewater collection and treatment systems include drains, manholes, trenches, surface impoundments, oil/water separators, storage and treatment tanks, junction boxes, sumps, basins, and biological treatment systems.

4. Transfer Operations

Synthetic organic chemical products are often transported by railcars or tank trucks. Chemicals are transferred to these vehicles through a loading rack, which can have multiple loading arms for connection to several transport vehicles. Emissions can occur during loading operations when residual vapors in transport vehicles and transfer piping are displaced by chemicals being loaded.

5. Equipment Leaks

Equipment leaks are fugitive releases of process fluid or vapor from process equipment. These releases occur primarily at the interface between connected components of equipment. The basic equipment components that are prone to develop leaks include pumps, compressors, process valves, pressure relief devices, open-ended lines, sampling connections, flanges and other connectors, agitators, product accumulator vessels, and instrumentation systems.

C. What are the health effects of HAP emitted from SOCMI facilities?

Of the 131 organic HAP regulated by the HON (table 2 to subpart F of part 63), EPA lists four as known carcinogens, 33 as probable carcinogens, and 15 as possible carcinogens. The EPA classified agents as carcinogens based on the weight of evidence in long-

term human studies of the association between cancer incidence and exposure to the agent and in animal studies conducted under controlled laboratory conditions. After evaluating the evidence, the agents were placed into one of the following five categories: A—human carcinogen, B—probable human carcinogen, C—possible human carcinogen, D—not classifiable as to human carcinogenicity, and E—evidence of noncarcinogenicity for humans. Category B is divided into two subcategories: B1—indicates limited human evidence and B2—indicates sufficient evidence in animals and inadequate or no evidence in humans.

With the March 2005 publication of revised Guidelines for Carcinogen Risk Assessment, EPA no longer uses the ''known, possible, probable'' nomenclature for classifying the weight of evidence for carcinogenicity of chemical compounds. Instead, EPA provides narrative descriptions of the weight of evidence for carcinogenicity, as well as the classifications ''carcinogenic to humans,'' ''likely to be carcinogenic,'' ''suggestive evidence of carcinogenic potential,'' ''inadequate information,'' and ''not likely.'' In time, the older classification scheme described above will be replaced.

The International Agency for Research on Cancer (IARC) also classifies carcinogens based on the ''strength of the evidence for carcinogenicity arising from human and experimental animal data.'' There are four groups under the IARC classification system: Group 1—the agent is carcinogenic to humans, Group 2A—the agent is probably carcinogenic to humans, Group 2B—the agent is possibly carcinogenic to humans, Group 3—the agent is not classifiable as to its carcinogenicity to humans, and Group 4—the agent is probably not carcinogenic to humans. Of the 51 HON HAP classified by IARC, four are Group 1, 33 are Group 2, and 14 are Group 3.

Additionally, many of the HAP regulated by the HON may result in noncarcinogenic effects at sufficient exposures. There is a wide range of effects due to chronic exposures to HON HAP, such as the degeneration of olfactory epithelium, peripheral nervous system dysfunction, and developmental toxicity. Effects from acute exposures range from mild to severe, and include skin, eye, and respiratory system irritation. More detail on the health effects of individual HON HAP may be found in numerous sources, including *http://www.epa.gov/iris.html, http://www.atsdr.cdc.gov/mrls.html,* and *http://www.oehha.ca.gov/air/acute_rels/index.html.*

D. What does the HON require?

The HON was proposed December 31, 1992 (57 FR 62608), and the final rule was published April 22, 1994 (59 FR 19402). Subsequently, several revisions to the rule have been issued: the first dated September 20, 1994 (59 FR 48175) and the last dated December 23, 2004 (69 FR 76859).

The HON regulates organic HAP emissions from five types of emission points: Storage vessels, process vents, wastewater collection and treatment systems, transfer operations, and equipment leaks. For storage vessels, process vents, process wastewater streams, and transfer operations, the HON establishes applicability criteria to distinguish between Group 1 emission points and Group 2 emission points. Controls are required only for emission points meeting the Group 1 criteria. Group 2 emission points are subject to recordkeeping requirements only. Before implementation of the HON, total HAP emissions were estimated to be 570,000 tons per year (tpy). We estimated that after implementation of the HON, total HAP emissions would be 66,000 tpy.

The HON provides many different control options, but the primary control requirements are summarized below.

1. Storage Vessels

The HON requires that Group 1 vessels be equipped and operated with an internal or an external floating roof, or reduce organic HAP emissions by at least 95 percent. A Group 1 vessel has a capacity greater than or equal to 40,000 gallons and contains a HAP with a vapor pressure greater than or equal to 0.75 psia. A vessel is also Group 1 if it has a capacity greater than or equal to 20,000 gallons and less than 40,000 gallons and contains a HAP with a vapor pressure greater than or equal to 1.9 psia.

2. Process Vents

The HON requires that the organic HAP emissions from Group 1 process vent streams be reduced by at least 98 percent by weight or achieve an outlet concentration of 20 parts per million by volume (ppmv) or less. A Group 1 process vent stream has a total organic HAP concentration of greater than or equal to 50 ppmv and a total resource effectiveness (TRE) of less than or equal to 1.0. Facilities also have the option of sending the process vent to a flare or maintaining a TRE index greater than 1.0. The TRE index is a measure of how costly a particular process vent is to control (the higher the TRE index, the more costly the control).

3. Process Wastewater

The HON requires that Group 1 wastewater streams be treated to reduce the HAP mass in the streams. Group 1 wastewater streams are streams that meet one of several minimum flow and HAP concentration criteria in the rule. The required mass removals are HAP-specific and range from 31 percent (*e.g.*, for methanol) to 99 percent (*e.g.*, for benzene). Emissions from collection and management units must be suppressed from the point of generation to the treatment device. Air emissions from treatment systems (except for open biological treatment systems which have different requirements) must be collected in a closed vent system and conveyed to a control device that reduces HAP emissions by 95 percent (or achieves an outlet concentration of 20 ppmv or less for combustion devices).

4. Transfer Operations

The HON requires control of Group 1 transfer racks to achieve a 98 percent reduction of organic HAP or an outlet concentration of 20 ppmv. Alternatively, facilities can use vapor balancing systems. A Group 1 transfer rack is a transfer rack that annually loads greater than or equal to 0.17 million gallons of liquid products that contain organic HAP with a rack weighted average vapor pressure greater than or equal to 1.5 psia.

5. Equipment Leaks

The HON requires equipment and work practice standards (in the form of a leak detection and repair program) to reduce equipment leak emissions. The equipment leak provisions apply to all equipment components that are associated with a process subject to the HON and that are in organic HAP service for 300 hours per year or more. The HON requires valves to be monitored once per month (or implementation of a quality improvement program) at each process unit with two percent or greater leaking valves. The monitoring frequency may be decreased as the percentage of leakers decreases or if the equipment leaks standards are met over consecutive periods.

II. Summary of Proposed Revised Standards

This proposal provides two options that we expect to choose between for revising the HON rule. The first option is to retain the current HON rule. The second option is to revise subparts F, G, and H to require more stringent standards for process vents, storage vessels, and equipment leaks that emit

or store certain HAP. As explained below, we propose that either option would meet the requirements of both section 112(f)(2) and 112(d)(6). Their difference results from how we weigh certain risk factors (specifically, maximum individual lifetime cancer risk versus cancer incidence, and their relative relationship to costs) within our determination of what is necessary to protect public health with an ample margin of safety under section 112(f)(2), and of what changes are necessary under section 112(d)(6).

A. Summary of Option 1

Under this option, the control requirements of 40 CFR subpart F, G, and H would remain the same as under the current rule, and we would not revise applicability criteria to require currently uncontrolled storage vessels and process vents to control emissions, nor would we reduce the percentage of leaking valves.

B. Summary of Option 2

Under this option, the control requirements of 40 CFR subpart G would remain the same as under the current rule, but the applicability criteria for Group 1 storage vessels and process vents would be revised so that additional emission points would be required to control emissions. For equipment leaks, the first option would reduce, in subpart H, the percentage of leaking valves.

The existing applicability criteria for equipment leaks and Group 1 criteria for storage vessels and process vents would continue to apply. After the rule becomes effective, an additional criterion would be added. The additional criterion would apply only to emission points that emit maleic anhydride, methyl bromide, acrolein, and any HAP for which inhalation cancer unit risk estimates (UREs) have been developed.[1] A list of these HAP is given in proposed table 38 of 40 CFR, part 63, subpart G. This list may be amended over time as more information indicates that some HAP should be added or removed.

The proposed changes to the standards, based on the second control option, are summarized below:

Emission source	Proposed changes to standards (Option 2)
Storage vessels	A group 1 storage vessel means a Group 1 storage vessel as currently defined in § 63.111 to subpart G of part 63. On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER],** a group 1 storage vessel also includes storage vessels that store one or more HAP listed in table 38 to subpart G of part 63, and have a combined HAP emission rate greater than 4.54 megagrams per year (5.0 tons HAP per year) on a rolling 12-month average.
Process vents	A group 1 process vent means a Group 1 process vent as currently defined in § 63.111 to subpart G of part 63. On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], a group 1 process vent also includes process vents for which the vent stream emits one or more HAP listed in table 38 to subpart G of part 63, and the TRE index value is less than or equal to 4.0.
Equipment leaks	For CMPUs containing at least one HAP listed in table 38 to subpart G of part 63, on or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], monthly monitoring of equipment components is required until the process unit has fewer than 0.5 percent leaking valves in gas/vapor service and in light liquid service.

For storage vessels, emissions would be computed using the procedures in § 63.150. Group 2 storage vessels that contain table 38 HAP would be required to maintain records of rolling 12-month average HAP emissions. For equipment leaks, the frequency of monitoring could be reduced to quarterly, semi-annually, and annually if successive monitoring periods show that facilities are able to maintain less than 0.5 percent leakers. Monthly monitoring would be required if the percent leakers exceeds 0.5 percent.

Under Option 2, we are also proposing compliance dates for sources subject to the proposed revised standards pursuant to section 112(i) of the CAA. When Congress amended the CAA in 1990, it established a new, comprehensive set of provisions regarding compliance deadlines for sources subject to emissions standards and work practice requirements that EPA promulgates under section 112. However, as discussed later in this section of this preamble, Congress also left in place other provisions in section 112(f)(4) that in certain respects are redundant or conflict with the new compliance deadline provisions. These provisions also fail to accommodate the new State-administered air operating permit program added in title V of the amended CAA.

For new sources, section 112(i)(1) requires that after the effective date of ''any emission standard, limitation, or regulation under subsection (d), (f) or (h), no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or State with a permit program approved under title V) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.'' Section 112(a)(4) defines a ''new source'' as ''a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such sources.'' Under sections 112(e)(10) and 112(f)(3), any section 112(d)(6) emission standards and any residual risk emission standards shall become effective upon promulgation. This means generally that a new source that is constructed or reconstructed after this proposed rule is published must comply with the final standard, when promulgated, immediately upon the rule's effective date or upon the source's start-up date, whichever is later.

There are some exceptions to this general rule. First, section 112(i)(7) provides that a source for which construction or reconstruction is commenced after the date an emission standard is proposed pursuant to subsection (d) but before the date a revised emission standard is proposed under subsection (f) shall not be required to comply with the revised standard until 10 years after the date construction or reconstruction commenced. This provision ensures that new sources that are built in compliance with MACT will not be forced to

[1] The URE is the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter ($\mu g/m_3$) in air. For example, if a URE of 1.5×10^{-6} per $\mu g/m_3$ is reported, then 1.5 excess cancer cases are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 ug of the chemical in 1 cubic meter of air.

undergo modifications to comply with a residual risk rule unreasonably early.

In addition, sections 112(i)(2)(A) and (B) provide that a new source which commences construction or reconstruction after a standard is proposed, and before the standard is promulgated, shall not be required to comply with the promulgated standard until three years after the rule's effective date, if the promulgated standard is more stringent than the proposed standard and the source complies with the proposed standard during the three-year period immediately after promulgation. This provision essentially treats such new sources as if they are existing sources in giving them a consistent amount of time to convert their operations to comply with the more stringent final rule after having already been designed and built according to the proposed rule.

For existing sources, section 112(i)(3)(A) provides that after the effective date of ''any emission standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates * * * which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard[.]'' This potential 3-year compliance period for existing sources under section 112(i)(3) matches the 3-year compliance period provided for new sources subject to section 112(d), (f), or (h) standards that are promulgated to be more stringent than they were proposed, as provided in sections 112(i)(1) and (2).

As for new sources, there are exceptions to the general rule for existing sources under section 112(i)(3), the most relevant being section 112(i)(3)(B) allowance that EPA or a State title V permitting authority may issue a permit granting a source an additional one year to comply with standards ''under subsection (d)'' if such additional period is necessary for the installation of controls. As explained below, EPA now believes that this reference to only subsection 112(d), rather than to section 112 in general, was accidental on Congress' part and presents a conflict with the rest of the statutory scheme Congress enacted in 1990 to govern compliance deadlines under the amended section 112.

Even though, in 1990, Congress amended section 112 to include the comprehensive provisions in subsection 112(i) regarding compliance deadlines, the enacted CAA also included provisions in section 112(f), leftover from the previous version of the Act, that apply compliance deadlines for sources subject to residual risk rules. These deadlines differ in some ways from the provisions of section 112(i). First, section 112(f)(4) provides that no air pollutant to which a standard ''under this subsection applies may be emitted from any stationary source in violation of such standard * * *'' For new sources, this is a redundant provision, since the new provisions added by Congress in sections 112(i)(1), (2), (3), and (7)—which explicitly reach standards established under section 112(f)—already impose this prohibition with respect to new sources and provide for the allowable exceptions to it. In contrast, for new sources, the prohibition in section 112(f)(4) provides for no exception for a new source built shortly before a residual risk standard is proposed, makes no reference to the new title V program as an implementation mechanism, and, where promulgated standards are more stringent than their proposed versions, makes no effort to align compliance deadlines for new sources with those that apply for existing sources. From the plain language of section 112(i), it is clear that Congress intended in the 1990 amendments to comprehensively address the compliance deadlines for new sources subject to any standard under either subsections 112(d), (f), or (h), and to do so in a way that accommodates both the new title V program added in 1990 and the fact that where circumstances justify treating a new source as if it were an existing source, a substantially longer compliance period than would otherwise apply is necessary and appropriate. It is equally clear that the language in section 112(f)(4) fails on all these fronts for new sources.

In addition, for existing sources, section 112(f)(4)(A) provides that a residual risk standard and the prohibition against emitting HAP in violation thereof ''shall not apply until 90 days after its effective date[.]'' However, section 112(f)(4)(B) states that EPA ''may grant a waiver permitting such source a period up to two years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.'' These provisions are at odds with the rest of the statutory scheme governing compliance deadlines for section 112 rules in several respects. First, the 90-day compliance deadline for existing sources in section 112(f)(4)(A) directly conflicts with the up-to-3-year deadline in section 112(i)(3)(A) allowed for existing sources subject to ''any'' rule under section 112. Second, the section 112(f)(4)(A) deadline results in providing a shorter deadline for ordinary existing sources to comply with residual risk standards than would apply under section 112(i)(2) to new sources that are built after a residual risk standard is proposed but a more stringent version is promulgated. Third, while both section 112(i)(1), for new sources subject to any section 112(d), (f), or (h) standard, and section 112(i)(3), for existing sources subject to any section 112(d) standard, refer to and rely upon the new title V permit program added in 1990 and explicitly provide for State permitting authorities to make relevant decisions regarding compliance and the need for any compliance extensions, section 112(f)(4)(B) still reflects the pre-1990 statutory scheme in which only the Administrator is referred to as a decision-making entity, notwithstanding the fact that even residual risk standards under section 112(f) are likely to be delegated to States for their implementation, and will be reflected in sources' title V permits and need to rely upon the title V permit process for memorializing any compliance extensions for those standards.

While we appreciate the fact that section 112(i)(3)(B) refers specifically only to standards under subsection 112(d), which some might argue means that subsection 112(i)(3), in general, applies only to existing sources subject to section 112(d) standards, we believe that Congress inadvertently limited its scope and created a statutory conflict in need of our resolution. Notwithstanding the language of subparagraph (B), section 112(i)(3)(A) by its terms applies to ''any'' standard promulgated under ''section'' 112, which includes those under subsection 112(f), in allowing up to a three year compliance period for existing sources. Moreover, Congress clearly intended the section 112(i) provisions applicable to new sources to govern compliance deadlines under section 112(f) rules, notwithstanding the language of section 112(f)(4). This is because sections 112(i)(1) and (2) explicitly reach standards under section 112(f). To read section 112(i)(3)(B) literally as reaching only section 112(d) standards, with section 112(f)(4)(B) reaching section 112(f) standards, leaves the question as to whether there can be compliance extensions for section

112(h) standards completely unaddressed by the statute, even though it may in fact be necessary in complying with a section 112(h) work practice standard to install equipment or controls. A narrow reading of the scope of section 112(i)(3) also ignores the fact that in many cases, including that of this proposed rule, the governing statutory authority will be both section 112(f)(2) and section 112(d)(6)—the only reasonable way to avoid a conflict in provisions controlling compliance deadlines for existing sources in these situations is to read the more specific and comprehensive set of provisions, those of section 112(i), as governing both aspects of the regulation.

Nothing in the legislative history suggests that Congress knowingly intended to enact separate schemes for compliance deadlines for residual risk standards and all other standards adopted under section 112. Rather, comparing the competing Senate and House Bills shows that each bill contained its own general and/or specific versions of compliance deadline provisions, and that when the bills were reconciled in conference the two schemes were both accidentally enacted, without fully modifying the various compliance deadline provisions in accord with the modifications otherwise made to the section 112 amendments in conference.

We recognize that our existing regulations in the part 63 General Provisions currently reflect the dual scheme presented by sections 112(f)(4) and 112(i) (See 40 CFR 63.6(c)(2), 63.6(i)(4)(ii)). In the near future, we intend to revise those regulations to comport with our interpretation, as explained above, to avoid confusion and situations where a rule incorporates those provisions by reference such that compliance deadlines are inconsistent with our interpretation. In the meantime, notwithstanding the part 63 General Provisions, we are proposing a compliance deadline for existing sources, under Option 2, of three years for process vents and storage vessels and one year for equipment leaks. The proposed compliance deadline for existing sources of three years for process vents and storage vessels is realistic for any affected facility that has to plan their control strategy, purchase and install the control device(s), and bring the control device online. Less time is required for compliance with the new equipment leak requirements, but plants will have to identify affected equipment and modify their existing leak detection and repair program to meet the new requirements for monitoring frequency.

III. Rationale for the Proposed Rule

A. What is our approach for developing residual risk standards?

Following our initial determination that the individual most exposed to emissions from the category considered exceeds a 1-in-1 million individual lifetime cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable risk and ample margin of safety. The first step is the consideration of acceptable risk. The second step determines an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is required to prevent adverse environmental effect after the consideration of costs, energy, safety, and other relevant factors).

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) refers positively to the interpretation of these terms in our 1989 rulemaking (54 FR 38044, September 14, 1989), ''National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP),'' essentially directing us to use the interpretation set out in that notice. See also ''A Legislative History of the Clean Air Act Amendments of 1990,'' volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in a report on residual risk that we intended to utilize the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (see *Residual Risk Report to Congress*, March 1999, EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP (54 FR 38044, September 14, 1989), we stated as an overall objective: * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.''

The Agency also stated that, ''The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' The Agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.[2]'' As explained more fully in our Residual Risk Report to Congress, EPA does not define ''rigid line[s] of acceptability,'' but considers rather broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11).

B. How did we estimate residual risk?

The Residual Risk Report to Congress provides the general framework for conducting risk assessments to support decisions made under the residual risk program. As acknowledged by the report, the design of each risk assessment would have some common elements, including a problem formulation phase, an analysis phase, and the risk characterization phase.

The primary risk assessment for the SOCMI source category focused on inhalation exposures, both chronic and acute, to HAP emissions from CMPUs that are subject to the HON. The primary risk assessment was reviewed by Agency scientists before being used for this proposed rulemaking. The emissions estimates used in the primary risk assessment represented actual emissions that remain after the application of MACT, not emissions at the rate allowed by the HON requirements (''allowable'' emissions) that may be higher than actual emissions. Some of the emission points subject to the HON may be controlled to a higher level than required by the rules and some Group 2 points may be controlled even though the rule does not require them to be. This may be due to some State or local rules that are more stringent than the HON, or because some facilities may reduce emissions for reasons other than regulatory requirements. This means that the

[2] In the benzene decision, the Agency considered the same risk measures in the ''acceptability'' analysis as in the ''margin of safety'' analysis, stating: ''In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard a level that provides an ample margin of safety to protect the public health, as required by section 112.''

estimated risks based on allowable emissions would be higher than the risks estimated using actual emissions.

For some HON emission points, we could estimate allowable emissions; for others, it is nearly impossible. For equipment leaks, because the standards are work practice standards the actual emissions and allowable emissions are likely the same for equipment in the leak detection and repair program required by the HON. More frequent monitoring of equipment components (for example, monthly instead of quarterly) could result in actual emissions being lower than allowable emissions, but few, if any, sources monitor more frequently than required by the HON. For wastewater and process vents, if a facility chooses to control an emission point (to the level required in the HON), there is no requirement to determine whether the point is actually required to be controlled. A requirement to determine the applicability of controls for such emission points was intentionally not included in the HON because it was seen as an unnecessary burden for points that would be controlled anyway. Consequently, there are some emission points for which there is no readily available data that can be used to determine the applicability of control requirements. Without such data, there is no accurate way to determine allowable emissions under the current rule. In addition, HAP emissions from wastewater sources are likely controlled to a greater extent than the rules require, but this overcontrol is impossible to estimate. Emissions from transfer operations are small relative to the emissions from other points, with emissions from controlled points nationally accounting for less than one percent of total HON HAP emissions. Given the small contribution to total emissions from transfer operations, any differences between actual and allowable emissions would not be significant relative to the total emissions from all HON emission points.

While we acknowledge that there is some uncertainty regarding the differences between actual and allowable emissions, we believe that there is neither a substantial amount of overcontrol of Group 1 sources nor control of Group 2 sources so that actual emissions are a reasonable approximation of allowable emissions. Basing this analysis on actual emissions provides an acceptable approach to determining the remaining risks to public health and the environment after application of the MACT standards. Indeed, in this case, given the impossibility of definitively estimating allowable emissions, we have no choice but to rely upon the best available alternative information for assessing remaining risks after application of MACT, industry supplied actual emissions data. Uncertainty in the use of this data can be considered in the selection of the standards as appropriate.

Screening level assessments were also conducted to examine human health and ecological risk due to multipathway exposure and to examine the risks from entire plant sites (i.e., HON CMPUs and other HAP-emitting processes). A full discussion of the primary and screening level assessments is provided in the risk characterization document in the public docket.

1. How did we estimate the atmospheric dispersion of HAP emitted from HON CMPU sources?

To estimate the dispersion of HAP emitted from HON CMPUs for the inhalation and multipathway assessments, we used the Human Exposure Model, version 3 (HEM–3), which incorporated the Industrial Source Complex Short-term model, version 3 (ISCST–3). The ISCST3 dispersion model is one of EPA's recommended models for assessing pollutant concentrations from industrial facilities. The ISCST3 model handles a wide range of different source types that may be associated with an industrial source complex, including stack sources, area sources, volume sources, and open pit sources.

Inputs to the HEM–3 include source data to characterize the emissions from the facility, the emission sources at the facility, and the location of the facility. For the inhalation and multipathway assessments, we used site-specific information for the base year 1999 for 104 of the 238 existing HON facilities. These data were collected by the ACC through a voluntary survey and provided to EPA. These data consisted of organic HAP emissions from five types of emission points subject to the HON and included stack parameters, emission rates, and location coordinates. Data were provided for 271 HON CMPUs in the 1999 data collection. When scaled to 238 HON facilities, 732 HON CMPUs would be estimated for the industry. In the background information for the HON, it was estimated that there were 729 HON CMPUs nationwide. The similarities in the structure of the industry indicate that the 1999 collected data provide a reasonable picture of post-compliance emissions of organic HAP, and that the process unit information used in the residual risk analysis is representative of the CMPUs for the entire industry.

We recognize that the 1999 survey data have some uncertainties regarding the sources responding to a voluntary data request and the emissions reported. It is unclear the amount of bias that may exist in the data and the extent to which the 104 facilities in the survey are representative of the risks posed by the remaining facilities (see section III.C.1. of this preamble for additional discussion). However, the 1999 survey data are still the most detailed and comprehensive data available, and we conclude that the data are appropriate for use in conducting this residual risk assessment. Uncertainty in the use of this data can be considered in the selection of the standards as appropriate.

Some inorganic HAP, such as hydrochloric acid and chlorine, may be emitted from HON sources. However, these compounds were not considered in this risk assessment because data were not available to characterize emissions of those HAP. The HON regulates emissions of organic HAP only and the 1999 ACC data provided information on organic HAP emissions only. As discussed below in III.B.4, an additional analysis was conducted using information in the National Emissions Inventory (NEI) to estimate the risk from the entire plant site at which the HON CMPU are located. The NEI information contained information on both organic and inorganic HAP emitted from each facility. A comparison between the analyses using the two different data sets showed that there were no cases where the concentration of an inorganic HAP emitted from a HON CMPU exceeded its reference value. Therefore, we concluded that not including inorganic HAP in the primary risk assessment does not affect the results of the analysis and that no further assessment of inorganic HAP emissions is necessary.

2. How did we assess public health risk associated with HAP emitted from HON CMPUs?

The primary tool used to estimate individual and population exposures in the inhalation and multipathway assessments was the Human Exposure Model, Version 3 (HEM–3). The HEM–3 incorporates the ISCST3 air dispersion model and 2000 Census data, along with HAP dose response and reference values, to estimate chronic and acute human health risks and population exposure. This model is considerably more sophisticated, and less conservative, than tools traditionally associated with scoping-type analyses

(such as use of the Human Exposure Model, version 1.5). More information on HEM–3 is available from the HEM–3 User's Guide.

The HEM–3 performs detailed analyses of acute and chronic air pollution risks for populations located near industrial emission sources. The HEM–3 performs three main operations: dispersion modeling, estimation of human health risks, and estimation of population exposure. In order to perform these calculations, HEM–3 draws on three data libraries provided with the model: A library of meteorological data for over 60 stations, a library of census block internal point locations, populations, and elevations to provide the basis for human exposure calculations, and a library of pollutant unit risk factors and reference concentrations used to calculate risks.

In our assessment of public health risk associated with HAP emitted from HON CMPUs, we considered risks of cancer and other health effects. Cancer risks associated with inhalation exposure were assessed using lifetime cancer risk estimates (i.e., assuming 70 years of exposure 24 hours a day for all individuals in a given location). The noncancer risks were characterized through the use of hazard quotient (HQ) and hazard index (HI) estimates. The HQ and HI also assume continuous lifetime exposures. An HQ compares an estimated chemical intake (dose) with a reference level below which adverse health effects are unlikely to occur. Within the context of inhalation risk, EPA uses a ''Reference Concentration (RfC)''. An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from a NOAEL, LOAEL, or benchmark concentration, with uncertainty factors generally applied to reflect limitations of the data used. An HQ is calculated as the ratio of the exposure concentration of a pollutant to its health-based reference concentration. If the HQ is calculated to be less than 1, then no adverse health effects are expected as a result of the exposure. However, an HQ exceeding 1 does not translate to a probability that adverse effects will occur. Rather, it suggests the possibility that adverse health effects may occur. An HI is the sum of HQ for pollutants that target the same organ or system. As with the HQ, values that are below 1.0 are considered to represent exposure levels with no significant risk of adverse health effects.

3. How did we assess multipathway impacts of HAP emissions from HON CMPUs?

The HON CMPUs at six of the 238 facilities emit HAP that are of concern for potential adverse health impacts from pathways other than inhalation (e.g., soil or fish ingestion). These HAP are often termed persistent bioaccumulative toxics (PBTs). When deposited into soil and water, PBT may be taken up by organisms and passed along the food chain. The concentration of PBT in tissues can increase beyond the concentration of the surrounding environment from one link in a food chain to another (i.e., bioaccumulation and biomagnification). The multipathway assessments estimated both human health and ecological adverse impacts. Ecological impacts increase with PBTs because plants and wildlife are exposed to pollutants in soil, water, and the food chain, in addition to the air.

Modeling the fate and transport of the PBTs through air, soil and the food chain, and watersheds is a more complex and uncertain task than estimating air transport for the inhalation pathway. Because of the complexity and increased level of effort in both time and resources and because gas phase compounds emitted from HON CMPUs are not transferred to other media to any appreciable degree, we conducted a simplified screening level approach to estimating media concentrations of the PBTs. Due to the wide variety of species of plants and animals potentially exposed, we needed to simplify fate and transport inputs and methods through a health-protective, screening level approach and screening level dose-response values.

Adverse impacts on individuals of the most sensitive species potentially exposed for each exposure pathway and HAP were first estimated to indicate whether there is a potential problem to the ecosystem. If no adverse impacts to the most sensitive species are predicted, no adverse ecosystem impacts would be expected. If risks are estimated to exceed a level of concern in the screening assessment, more refined inputs and modeling techniques would be employed in further assessments.

4. How did we assess risks for the entire plant site?

Due to the substantial co-location of HON CMPUs with other HAP-emitting processes, we also characterized how the risks resulting from emissions from HON CMPUs relate to the risks resulting from emissions from all processes (HON and non-HON processes) at the entire plant site. In addition, we were interested in learning how well the HON CMPU data, available for approximately half of the industry, represented the entire industry. Therefore, an additional analysis was conducted to estimate the risk from all HAP emitting processes at the entire plant site.

This analysis was conducted for 226 facilities where CMPUs subject to the HON are located. The 1999 data submitted by the ACC that were used in the CMPU analysis described in section B.1 could not be used for this plant-level analysis because data were provided only on HON CMPUs. However, the 1999 NEI contained information on HAP emissions from the entire facility and was used for the analysis (hereafter referred to as the NEI Assessment). On the other hand, the NEI data were not used for the primary risk assessment because of the difficulty in apportioning emissions to only HON CMPUs.

The NEI Assessment considered only chronic cancer and noncancer risk (not acute risk) because focusing only on chronic risk is adequate to compare the risk posed by the HON CMPUs to the risk posed by the entire plant site. Also, without additional information, it would be difficult to characterize short-term emissions of sources that are not affected by the HON. Whereas the HON CMPUs at a facility are typically continuous and assumptions can be made about the temporal variability of emissions, other processes may not be continuous and characterizing the short-term emissions would be difficult.

The HEM–3 model was used to estimate the maximum individual lifetime cancer risks and lifetime noncancer HI values estimated to result from emissions at each of these facilities. In addition, a brief analysis was conducted to compare how the HON CMPUs contributed to the situations where there is substantial co-location of SOCMI process units with other HAP-emitting processes

C. What are the residual risks from HON CMPUs?

1. Health Risks From Chronic Inhalation Exposure

Table 1 of this preamble shows the estimated maximum individual lifetime cancer risk, maximum HI resulting from lifetime exposure, population risk, and cancer incidence associated with HON CMPUs at 104 of the 238 existing facilities for which emissions data were available. The size of the population at risk and cancer incidence estimated to be associated with HON CMPUs were

extrapolated to the entire source category of 238 existing facilities with HON CMPUs using the ratio of 2.3 (238/104). An inherent assumption in using the simple 238/104 ratio is that the population densities around the plants not assessed are similar to those of the 104 plants that were assessed.

The maximum individual lifetime cancer risk associated with any source in the category is estimated to be approximately 100-in-1 million. This estimate characterizes the lifetime risk of developing cancer for the individual facing the highest estimated exposure over a 70-year lifetime. With respect to chronic noncancer effects, HON CMPUs at two facilities have a maximum respiratory HI that barely exceeds 1, with only 20 people estimated to be exposed to HI levels greater than 1. As noted earlier, even an HI of 1 does not necessarily suggest a likelihood of adverse effects.

TABLE 1.—RISK ESTIMATES DUE TO HAP EXPOSURE BASED ON 70-YEAR EXPOSURE DURATION

Parameter	Results for 104 surveyed facilities	Results extrapolated to all 238 facilities
Maximum individual lifetime cancer risk (in a million)	100	100
*Maximum hazard index (chronic respiratory effects)	1	1
Estimated size of population at risk from all HON CMPUs:		
>1-in-1 million	850,000	2,000,000
>10-in-1 million	4,000	9,000
>100-in-1 million	0	0
Annual cancer incidence (No. of cases)	0.06	0.1

*An HQ exceeding 1 does not translate to a probability that adverse effects will occur. Rather, it suggests the possibility that adverse effects may occur.

We compared the highest risks (maximum individual lifetime cancer risk and maximum chronic HI) estimated for HON CMPUs at facilities in the source category to the highest estimated risks from the NEI Assessment. In the HON CMPU assessment conducted on the 104 facilities, HON CMPUs at one facility were estimated to have a maximum individual lifetime cancer risk of 100-in-1 million. Extrapolating this result to the rest of the industry (i.e., 238 facilities) suggests that HON CMPUs at two facilities are likely to be associated with a cancer risk of 100-in-1 million. In the NEI Assessment, three facilities were estimated to have a maximum individual lifetime cancer risk greater than 100-in-1 million where the risk was driven by HAP emissions from a HON CMPU. The maximum individual lifetime cancer risk estimated for the NEI Assessment was 300-in-1 million.

For noncancer effects, the HON CMPUs at one of the 104 facilities were estimated to have an HI of 1 in the HON CMPU assessment. Extrapolating these results to the rest of the industry suggests HON CMPUs at two facilities are estimated to have an HI of 1 for chronic respiratory effects. In the NEI Assessment, five facilities were estimated to have a maximum HI greater than 1 where risk was driven by HAP emissions from HON CMPUs. The maximum estimated HI from the NEI Assessment was 6.

In comparing the two risk assessments, the extrapolated results from the HON CMPU assessment are relatively consistent with the NEI Assessment in terms of the number of facilities where HON CMPUs pose risks in the range of 100-in-1 million. In addition, the magnitude of the risks from the two studies is relatively close, considering the health-protective nature of the NEI Assessment. Therefore, we determined it was appropriate to use the estimated risks from the HON CMPU assessment, which represents about half of the facilities in the industry, to represent the risks from the entire industry. Nevertheless, we acknowledge that the risks associated with HON facilities not specifically included in this assessment may be higher or lower than those assessed. Uncertainty in the use of this data can be considered in the selection of the standards as appropriate.

EPA toxicological assessments are currently underway for several HAP emitted from HON CMPUs. For example, the cancer inhalation URE for ethylene oxide is under review. Ethylene oxide is one of the HAP that contributes significantly to the cancer risks for several HON CMPUs. EPA has not yet completed a full evaluation of the data on which it will determine a cancer URE for ethylene oxide. The schedule for the ethylene oxide review and the reviews of other HAP can be found at: *http://cfpub.epa.gov/iristrac.*

Under section 112(o)(7) of the CAA, we are required to issue revised cancer guidelines prior to the promulgation of the first residual risk rule under section 112(f) (an implication being that we should consider these revisions in the various residual risk rules). We have issued revised cancer guidelines and also supplemental guidance that specifically address the potential added susceptibility from early-life exposure to carcinogens. The supplemental guidance provides guidance for adjusting the slope of the dose response curve by applying ''age-dependent adjustment factors'' (which translates into a factor of 1.6 for lifetime exposures) to incorporate the potential for increased risk due to early-life exposures to chemicals that are thought to be carcinogenic by a mutagenic mode of action.

Some evidence indicates that several HAP that are emitted from HON CMPUs and that dominate the risks in our assessment may be carcinogenic by a mutagenic mode of action, although for most carcinogenic HAP the formal determination of mode of action has not yet been made. Thus, we did not apply age-dependent adjustment factors to the cancer risk estimates in our residual risk assessment for HON CMPUs.

2. Health Risks From Acute Inhalation Exposure

In addition to chronic cancer and noncancer effects, acute effects were also assessed. We used the ratio analogous to the HQ in which we compared the maximum 1-hour average air concentration for each HAP emitted from HON CMPUs at each facility with the lowest (*i.e.*, most health protective) of the available acute reference values for that HAP. In this analysis, exposure estimates for 10 HAP exceeded at least one acute reference value for HON CMPUs in at least one facility. However, for eight of those HAP (acrylonitrile, benzene, chloroform, ethylene glycol, formaldehyde, methyl bromide, methyl chloride, and toluene) the estimated exceedances were only for no-effect reference values. All estimated exposures were lower than available

mild-effect reference values. Given the protective nature of these no-effect reference values, and the fact that the estimated exposures to which they were compared are the highest expected for any 1-hour period in five years, we concluded that the eight HAP do not pose a significant health threat by acute inhalation.

Estimated exposures to the other two HAP, acrolein and ethyl acrylate, exceeded a mild-effect reference value at a single facility with a HON CMPU. The estimated acrolein exposure of 100 micrograms per cubic meter ($\mu g/m^3$) exceeded the acute exposure guideline level of 69 $\mu g/m^3$, and the estimated ethyl acrylate exposure of 50 $\mu g/m^3$ exceeded the emergency response planning guideline value of 41 $\mu g/m^3$. Both exposure estimates were well below corresponding reference values for more severe effects. Because these estimated 1-hour exposures reflect the highest 1-hour concentrations near the facility in a 5-year period and would at worst cause only mild, reversible effects, EPA does not consider them to pose a significant health threat.

For 15 HAP, no mild-effects reference values were available, and the lowest acute reference values for emergency planning uses are associated with severe health effects. For these HAP, the 1-hour exposure estimates were compared to these severe effects reference values. The highest acute HQ is 0.02, suggesting that these HAP also are very unlikely to pose health threats by acute inhalation exposure.

3. Multipathway Risks

The lifetime cancer risk and noncancer adverse health impacts estimated to result from multipathway exposure are well below levels generally held to be of concern. Only two HAP emitted by HON CMPUs, hexachlorobenzene and anthracene, were estimated to pose any potential for exposures via routes beyond direct inhalation. The maximum cancer risk estimated for exposures to these HAP is 0.2-in-1 million. For noncancer impacts, the maximum HQ is 0.0004. From these low risk estimates, we concluded that multipathway risks do not pose a higher risk than inhalation exposure.

As with human health impacts, all the ecological HQ values are well below levels of concern, with the highest HQ being 0.05 from benthic/sediment exposure by aquatic life to anthracene. The highest HQ is 0.02 from surface water exposure by aquatic life to hexachlorobenzene. We do not believe these levels are high enough to pose adverse environmental effects as defined in CAA section 112(a)(7).

D. What is our proposed decision on acceptable risk?

Section 112(f)(2)(A) of the CAA states that if the MACT standards applicable to a category of sources emitting a: ''* * * known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category * * * to less than 1-in-1 million, the Administrator shall promulgate [residual risk] standards * * * for such source category.'' Processes that would be subject to the proposed amendments under our first proposed option emit known, probable, and possible human carcinogens, and, as shown in table 1 of this preamble, we estimate that the maximum individual lifetime cancer risk (discussed below) associated with the standards of the 1994 HON is 100-in-1 million. Since the maximum individual lifetime cancer risk is greater than 1 in a million, we are required to consider (residual risk) standards.

As discussed in section IV.A of this preamble, we used a two-step process in establishing residual risk standards. The first step is the determination of acceptability (i.e., are the estimated risks due to emissions from these facilities ''acceptable''). This determination is based on health considerations only. The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (54 FR 38045, quoting the Vinyl Chloride decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the 1989 Benzene NESHAP, we stated that a maximum individual lifetime cancer risk of approximately 100-in-1 million should ordinarily be the upper end of the range of acceptable risks associated with an individual lifetime cancer source of pollution. We discussed the maximum individual lifetime cancer risk as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' We acknowledge that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper bound that is unlikely to be exceeded.''

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' Consequently, the presumptive risk level of 100-in-1 million provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. In establishing a presumption for the acceptability of maximum risk, rather than a rigid line for acceptability, we explained in the 1989 Benzene NESHAP that risk levels should also be weighed with a series of other health measures and factors, including the following:

- The numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 kilometer (km) (about 30 miles) exposure radius around facilities;
- The science policy assumptions and estimation uncertainties associated with the risk measures;
- Weight of the scientific evidence for human health effects;
- Other quantified or unquantified health effects;
- Effects due to co-location of facilities and co-emission of pollutants; and
- The overall incidence of cancer or other serious health effects within the exposed population.

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone.

Based upon the criteria identified above, for purposes of both of our proposed options discussed below, we judge the level of risk of the current HON rule to be acceptable for this source category. The calculated maximum individual lifetime cancer risk associated with HON CMPUs is 100-in-1 million. There are no people with estimated risks greater than 100-in-1 million, which is the presumptively acceptable level of maximum individual lifetime cancer risk under the 1989 Benzene NESHAP criteria. The HON CMPUs at 32 facilities are estimated to pose risks of between 10 and 100-in-1 million, with 9,000 people estimated to be exposed in this risk range. The HON CMPUs at the remaining 206 facilities are estimated to pose risks of 10-in-1 million or less. For the exposed population, total annual cancer incidence is estimated at 0.1 cases per

year. In addition, significant non-cancer health effects are not expected. The HON CMPUs at only two of the 238 facilities are associated with an HI greater than 1, with less than 20 people estimated to be exposed at levels associated with an HI greater than 1.

E. What is our proposed decision on ample margin of safety?

The second step in the residual risk decision framework is the determination of standards with corresponding risk levels that are equal to or lower than the acceptable risk level and that protect public health with an ample margin of safety. In making this determination, we considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP.

Many HON sites are located near other HON sites or other industrial sites, and people who live in these areas may be exposed to HAP emitted from multiple sources. We analyzed the effects of facility clusters on cancer risk levels by modeling all facilities with HON CMPUs that are located within 50 km of one another. The maximum individual lifetime cancer risk of clustered emissions was similar to the highest maximum individual lifetime cancer risk of a facility with a HON CMPU in that cluster. We concluded, therefore, that cluster effects have little or no significant effect on the risks to the individuals most exposed. The individuals potentially exposed to the highest risks would typically reside very near one of the facilities, and the resulting risk would be almost entirely caused by that closest facility. While these individuals may also be exposed to emissions from neighboring facilities, we found that the risks are sufficiently lower than the maximum risk posed by the nearby facility.

Before developing our two general proposed options under sections 112(f)(2) and 112(d)(6), we considered three regulatory alternatives for providing an ample margin of safety, assuming some degree of additional control is warranted. In developing the regulatory alternatives that assumed additional control is warranted, we wanted to target further emission reductions to the extent possible to reduce public health risks. Therefore, the alternatives were crafted to apply only at CMPUs that emit either carcinogenic HAP, or HAP that are not carcinogens but for which estimated exposure concentrations after application of MACT exceed chronic noncancer thresholds. Acrolein, methyl bromide, and maleic anhydride are the only three which exceed chronic noncancer thresholds. These 47 carcinogenic and three noncarcinogenic HAP are listed in proposed table 38 of 40 CFR, part 63, subpart G.

We did not have sufficiently detailed information to analyze the possibility of controls on the various specific sources within a facility but outside the HON source category. Because the facilities in this source category also frequently have other non-HON processes we could not always associate the reported emissions from the NEI Assessment to a particular source category. As a result, we could not evaluate the existing levels of control or the potential for applying additional controls at the facilities where HAP emissions from non-HON processes contributed to the risk. Our position on the potential consideration of both source category-only emissions and facilitywide emissions is fully discussed in the final coke oven batteries NESHAP (70 FR 19996–19998, April 15, 2005).

To develop possible regulatory alternatives, we first identified the additional control measures that could be applied at a specified cost to each of the five kinds of emission points regulated by the HON. The feasible control measures then were combined to develop the regulatory alternatives for assessing ample margin of safety. Control measures were defined in terms of both an emission control technology and the number of emission points controlled.

The current HON standards for storage vessels, process vents, equipment leaks, wastewater collection and treatment operations, and transfer loading operations require the use of technologies such as thermal oxidizers, carbon adsorbers, and steam strippers to reduce HAP emissions by 95 to 98 percent. We did not identify any other technically feasible control technologies that would reduce HAP emissions beyond these levels.

Consequently, to select control measures that would further reduce HAP emissions from HON CMPUs, we considered changing the applicability criteria to require control of uncontrolled emission points (i.e., certain Group 2 emission points under the original rule would become Group 1 emission points under the revised rule). For equipment leaks, we focused on reducing emissions from leaking valves in gas/vapor service and in light liquid service since these equipment components tend to have the highest emissions and, therefore, the greatest influence on risks from equipment leaks. Our evaluation of the feasible control measures for each of the five kinds of emission points is contained in memoranda in the public docket, and our proposed conclusions are summarized below.

1. Process Vent Control Measures

To develop possible additional control measures for process vents, we applied the current level of control (i.e., reduce HAP emissions by 98 percent) to the uncontrolled process vents reported in the ACC survey. For CMPUs that emit at least one HAP listed in table 38, each uncontrolled process vent emitting one or more of the HAP listed in the proposed table 38 of subpart G of part 63, we calculated a TRE index value, arrayed the TRE index values in ascending order (a higher TRE index value means higher control costs), and evaluated the emission reductions achieved by controlling each process vent. The TRE index value is a measure of the cost of applying a thermal oxidizer on a vent stream, based on vent HAP emissions, stream flow rate, net heating value, and corrosion properties (i.e., presence of halogenated compounds).

The current HON rule requires 98 percent control of process vents with a TRE of 1.0 or less at existing process units (corresponding to a cost of approximately $3,000 per ton). The miscellaneous organic NESHAP (40 CFR part 63, subpart FFFF) also affects the chemical manufacturing industry and requires control of process vents with a TRE of 1.9 at existing sources and a TRE of 5.0 at new sources. A TRE of 5.0 corresponds to a cost of approximately $15,000 per ton. In constructing a risk-based alternative for process vents containing table 38 HAP and considering control technology and cost, we analyzed impacts of further reducing table 38 HAP without exceeding the control level for the miscellaneous organic NESHAP (MON) for new sources (TRE of 5). We considered control of new and existing HON process vents with a TRE index value of 4.0 to be most reasonable.

A TRE cut-off of 4.0 will reduce emissions of total HAP by 640 tpy at HON CMPUs at 14 out of 238 total facilities that emit table 38 HAP. The total capital cost would be $13 million with a total annualized cost of $3.7 million. A TRE cut-off of 4.0 will also reduce emissions of total volatile organic compounds (VOC) by 1,100 tpy at HON CMPUs at 14 facilities that emit table 38 HAP. This control measure is included in our second proposed option

discussed below, but not in our first proposed option.

2. Storage Vessel Control Measures

To develop possible additional control measures for storage vessels, we applied the current HON MACT level of control (95 percent reduction) to the uncontrolled tanks reported in the ACC survey. We calculated the HAP emission reduction and cost for installing an internal floating roof on existing fixed-roof vessels that contain any HAP listed in the proposed table 38 of subpart G of part 63. We sorted the storage vessels by decreasing emission reductions and determined the cost per ton of HAP removed of controlling each tank. To achieve emission reductions at the least cost, we selected a control measure with the same cost as the process vent control measure. We evaluated internal floating roofs on storage vessels with cost of approximately $12,000 per ton of total HAP reduced or less for any individual vessel. Since it is impracticable to develop a TRE for storage vessels, another parameter was needed to characterize storage vessels with a cost of $12,000 per ton removed. After analyzing the data, we expect that an emission cutoff of five tons of HAP per year will ensure that no individual storage vessel that contains a HAP from proposed table 38 of 40 CFR, part 63, subpart G would incur a control cost that exceeds $12,000 per ton of HAP reduced. This emission cutoff would affect 7 out of 238 facilities and would reduce total HAP emissions by 120 tpy, at a total capital cost of $950,000 and a total annualized cost of $120,000. The average cost of controlling storage vessels at the 7 facilities would be $1,000 per ton of total HAP. The emission cut-off would also reduce emissions of VOC by 210 tpy.

3. Process Wastewater Control Measures

To develop possible additional control measures for process wastewater streams, we applied the current HON MACT level of control (i.e., steam stripper with control of overhead gases) to the emissions from uncontrolled wastewater streams reported in the ACC survey. To estimate HAP emission reductions, the removal performance of the steam strippers was determined using the compound-specific fraction removed values specified in tables 8 and 9 of subpart G of the HON. The destruction of the overhead gases from the steam strippers was assumed to be 95 percent (the same performance that is required in the current HON standards). The estimated total HAP emission reduction for the ACC facilities for which wastewater data were available was 495 tons/year.

While the ACC data contained sufficient information to estimate HAP emission reductions, flow rate data for individual streams, which is necessary to estimate control costs, were not available. To determine whether control of Group 2 wastewater streams would be feasible and whether additional data gathering would be warranted, we estimated cost per ton of HAP removed for each facility using the calculated HAP emission reductions and steam stripper cost estimates developed for model streams. The model streams were based upon comparable chemical manufacturing processes and wastewater HAP emissions data from rulemaking docket for the NESHAP for miscellaneous organic chemical manufacturing (40 CFR part 63, subpart FFFF). These data were grouped into HAP loading (kg/liter) ranges and default flow rates were estimated for each range. The default flow rates were assigned to wastewater streams for the facilities in the ACC survey data based upon the HAP loading for each stream.

Based on this analysis, 96 percent of the facilities had cost per ton of HAP removed exceeding $12,000 per ton of total HAP reduced. The average cost per ton of HAP removed for controlling Group 2 wastewater streams was approximately $410,000 per ton of HAP reduced. Considering these high costs, we concluded that it is not reasonable to require additional controls for Group 2 wastewater streams, in light of the minimal risk reduction obtained if additional controls were to be imposed. As a result, additional controls for Group 2 wastewater streams are not included in either of our two proposed options discussed below.

4. Equipment Component Control Measures

For leaking valves in gas/vapor service and in light liquid service, the possible additional control measures available to reduce HAP emissions are to either lower the leak definition, replace valves with leakless valves, or conduct more frequent monitoring by reducing the allowable percentage of leaking valves. We evaluated requiring replacement of existing valves in gas/vapor service and in light liquid service with leakless valves. However, we concluded that this method of control is not appropriate because it is extremely expensive. To implement this alternative, total industry capital costs would exceed $5.7 billion, and total annualized costs were calculated to be $780 million. The alternative would reduce total HAP emissions by 1,800 tpy and total VOC emissions by 3,200 tpy. The average cost of total HAP removed of this control alternative would be $430,000 per ton of HAP.

We also evaluated lowering the leak definition. Under Phase III of the current HON equipment leak standards, facilities are required to use a leak definition of 500 ppmv. However, we do not consider it appropriate to reduce the leak definition below the 500 ppmv level. We do not have any data that would indicate the emissions reduction or effectiveness in reducing risks associated with lowering the definition. Additionally, we do not have field data that validates that lower concentrations can be identified using Method 21.

The final method we evaluated to reduce HAP emissions from leaking valves was to reduce the allowable percent of valve population that can leak. Under the current HON standards, facilities are allowed to conduct less frequent monitoring (quarterly, semiannually, annually) if the percentage of leaking valves is less than two percent, but must monitor more frequently (monthly) if the percentage of leaking valves is more than two percent.

We evaluated requiring facilities to reduce the number of leaking valves in gas/vapor service and in light liquid service. Data supplied by the industry indicated that the average percent leaking valves at HON CMPUs is 0.5 percent. Requiring no more than 0.5 percent leakers would reduce total HAP emissions by 910 tpy, and total VOC emissions by 1,600 tpy, from HON CMPUs at 174 facilities. The annual cost of requiring 0.5 percent leakers was calculated to be $9.7 million per year. This regulatory alternative would require no capital expenditures but would impose additional labor costs. The average cost per ton of total HAP removed of requiring 0.5 percent leakers is $11,000 per ton of HAP.

We also evaluated requiring no more than 1.0 percent leakers. The total HAP emission reduction was estimated to be 420 tpy at an annual cost of $10 million per year. For less than five percent increase in annual cost, the 0.5-percent leak limit more than doubles the HAP reduction achieved by a 1.0-percent limit.

Under this control measure, facilities would conduct monthly monitoring until the 0.5-percent limit is achieved. The monitoring frequency would be reduced to quarterly, semi-annually, or annually if successive monitoring periods show that facilities are able to maintain 0.5 percent leakers or less. However, monthly monitoring would be required if the percent leakers exceeds 0.5 percent. While neither requiring

leakless equipment nor lowering the leak definition are included in either of our two proposed options discussed below, requiring 0.5 percent leaking valves (or less) is included in our second proposed option, but not in our first proposed option.

5. Transfer Operation Control Measures

We did not further evaluate controls for transfer operations because the HAP emissions remaining after compliance with the HON are very low. A total of 400 tpy of total HAP are emitted from controlled and uncontrolled transfer operations at HON sources, but only 200 tpy are from uncontrolled transfer operations. An additional 100 tpy are from transfer operations that did not specify whether they are controlled or uncontrolled. These emissions comprise less than three percent of total HAP emissions from all HON CMPUs, and less than one percent of the total risk from all HON CMPUs. Therefore, further control of transfer operations would provide no significant reduction of risk. The cost of controlling emissions from transfer operations ranges from approximately $10,000 per ton of HAP to over $100,000 per ton of HAP if there are already existing control devices that may be used to reduce emissions. If a new combustion device or vapor recovery device is also needed, the cost increases significantly. As a result, further controls for transfer operations are not included in either of our two proposed options discussed below.

6. Regulatory Alternatives

The three regulatory alternatives are presented in table 2 of this preamble along with the associated costs and emission reductions. Alternative I would require control of storage vessels that store a HAP listed in the proposed table 38 of 40 CFR part 63 of subpart G and emit more than five tpy of HAP. Alternative II would require the same controls as Alternative I plus control of process vents that have a TRE index value less than or equal to 4.0 and emit one or more HAP listed in the proposed table 38 of 40 CFR part 63, subpart G. Alternative III would require the same controls as Alternative II plus the requirement to reduce the number of leaking valves in gas/vapor service and in light liquid service to less than 0.5 percent for valves that contain at least one HAP listed in proposed table 38 of 40 CFR part 63, subpart G. Table 3 of this preamble summarizes the risk reduction associated with each regulatory alternative.

TABLE 2.—IMPACTS OF REGULATORY ALTERNATIVES

Alt.	Control requirement*	Total installed capital costs ($ million)	Total annualized cost ($ million)	Total HAP emission reduction (tpy)	Average cost per ton of HAP ($/ton)	Incremental cost per ton of HAP ($/ton)
I	Reduce HAP emissions by 95 percent from storage vessels that emit greater than 5 tons per year of HAP.	1	0.12	120	1,000	
II	Same as Alternative I plus reduce HAP emissions by 98 percent from process vents with a TRE value less than or equal to 4.0.	14	4	800	5,000	5,700
III	Same as Alternative II plus conduct monthly monitoring of process unit valves until the process unit has fewer than 0.5 percent leaking valves in gas/vapor and in light liquid service.	14	13	1,700	7,600	10,000

* Applies to units that emit HAP listed in proposed table 38 of 40 CFR 63, subpart G.

TABLE 3.—RISK IMPACTS OF REGULATORY ALTERNATIVES

Parameter	Regulatory alternative			
	Base	I	II	III
Risk to most exposed individual:				
Cancer (in a million)	100	100	100	60
* Noncancer (H1)	1	1	0.9	0.9
Size of population at cancer risk:				
>100-in-1 million	0	0	0	0
>10-in-1 million	9,000	9,000	9,000	7,000
>1-in-1 million	1,950,000	1,900,000	1,900,000	1,500,000
Number of plants at cancer risk level:				
>100-in-1 million	0	0	0	0
>10-in-1 million	32	32	32	32
>1-in-1 million	117	117	117	112
* Population with HI >1	20	20	0	0
* No. of Plants with HI >1	2	2	0	0
Cancer incidence	0.1	0.1	0.1	0.09
Cancer incidence reduction (percent)	.....	2	2	10
HAP emission reduction (percent)	.....	1	6	13

* If the HI is calculated to be less than 1, then no adverse health effects are expected as a result of the exposure. However, an HI exceeding 1 does not translate to a probability that adverse effects occur. Rather, it suggests the possibility that adverse health effects may occur.

7. Regulatory Decision for Residual Risk

Based on the information analyzed for the regulatory alternatives, we are proposing two options for our rulemaking on whether to establish additional emissions standards to protect public health with an ample margin of safety. The first proposed option is to maintain the current level of control in the HON (i.e., the baseline option in table 2 of this preamble) with no further modifications. The second proposed option corresponds to Regulatory Alternative III. In the final rule, we expect to select one of these

options, with appropriate modifications in response to public comments.

a. Rationale for Option 1

For the first option of the proposed rulemaking, we are proposing to make no changes to the current HON rule, instead proposing to find that the current level of control called for by the existing MACT standard represents both an acceptable level of risk (the cancer risk to the most exposed individual is approximately 100-in-1 million) and provides public health protection with an ample margin of safety. This proposed finding is based on considering the additional costs of further control (as represented by Option 2 [Regulatory Alternative III]) against the relatively small reductions in health risks that are achieved by that alternative.

The Agency would conclude under this proposal that the $13 million per year cost of Regulatory Option III would be unreasonable given the minor associated improvements in health risks. Baseline cancer incidence under the current HON rule is estimated at 0.1 cases per year. Proposed Option 2 would reduce incidence by about 0.01 cases per year. Statistically, this level of risk reduction means that Option 2 would prevent 1 cancer case every 100 years. Accordingly, the cost of this option could be considered to be disproportionate to the level of incidence reduction achieved. In addition, the Agency proposes to conclude that the changes in the distribution of risks reflected in table 3 of this preamble (*i.e.*, the maximum individual cancer risk is reduced by 40 percent to 60 in a million, 450,000 people's cancer risks are shifted to levels below 1 in a million, and 20 people's noncancer Hazard Index values would be reduced from above to below 1) are do not warrant the costs. This change in the distribution of risk, that is, the aggregate change in risk across an affected population of more than one in a million reduces cancer risk by 0.01 cancers per year (*i.e.*, one cancer across this population every on hundred years). Consequently, under Option 1 we are proposing that it is not necessary to impose any additional controls on the industry to provide an ample margin of safety to protect public health. Compared to Option 2, the rationale for Option 1 reflects a relatively greater emphasis on considering changes in cancer incidence in determining what is necessary to protect public health with an ample margin of safety and correspondingly less emphasis on maximizing the total number of people exposed to lifetime cancer risks below 1-in a million.

b. Rationale for Option 2

For the second option, we are proposing that Regulatory Alternative III provides an ample margin of safety to protect public health. This option reduces HAP emissions and risks beyond the current MACT standard using controls that are technically and economically feasible and that pose no adverse environmental impacts. The controls will reduce cancer risks to the most exposed individual by about 40 percent to 60 in a million. Exposures for approximately 450,000 people will be reduced from above the 1 in a million cancer risk level to below 1 in a million cancer risk level, and no individual will be exposed to a noncancer HI greater than 1. Note that these changes would reduce cancer incidence by 0.01 cases per year (*i.e.*, prevent one cancer case every hundred years). The rationale for this option reflects a relatively greater emphasis on maximizing the total number of people exposed to lifetime cancer risks below 1 in a million, compared to that in Option 1, while reflecting correspondingly less emphasis on various other public health metrics such as incidence reduction.

The annualized cost of Option 2 is $13 million. Our economic analysis (summarized later in this preamble) indicates that this cost will have little impact on the price and output of chemical and petroleum feedstocks. However, the Agency is considering the adoption of an approach, described elsewhere in this preamble, to allow sources to avoid additional controls if they can demonstrate that the risks posed by their HAP emissions already fall below certain low-risk thresholds. Depending on the public comments received, we may include this approach in the final rule, and this could result in some cost saving at individual facilities. We did not include this potential cost savings in our control cost calculations. It should be noted that the avoidance of controls would also result in fewer incidence and VOC reductions than those estimated above.

Discussion of Other Factors

Besides HAP emission reductions, the second option (Regulatory Alternative III) would reduce emissions of VOC by 2,900 tpy. Reducing VOC provides the added benefit of reducing ambient concentrations of ozone and may reduce fine particulate matter. We have not estimated the benefits of these reductions but previous work suggests that the ozone benefits per ton of VOC removed would span a large range, rarely exceeding $1000 to $2000 per ton. The cost of this option translates into about $4,300 per ton of VOC removed.

While we believe that the risk assessment for this proposal is appropriate for rulemaking purposes, we recognize that there are a variety of uncertainties in the underlying models and data. These include the uncertainties associated with the cancer potency values (of the 52 HAP identified as ''carcinogens'', EPA classifies only four as ''known carcinogens,'' while the remaining carcinogens are classified as either ''probable'' or ''possible'' carcinogens (using the 1986 nomenclature)), reference concentrations, uncertainties underlying emissions data, emissions dispersion modeling in the ISCST3 model, and the human behavior modeling (including assumptions of exposure for 24 hours a day for 70 years). One source of uncertainty is the reliance on industry-supplied data that represent only a segment of the industry. These data were not collected under the information collection authority of section 114 of the CAA, but were the result of a voluntary survey conducted by the industry trade association. It is unclear what bias may exist in the data or the extent to which the 104 facilities in the survey are representative of the maximum risks posed by the remaining 134 facilities. Another source of potential uncertainty is the use of data based on actual HAP emissions, rather than the maximum allowable emissions under the current HON rule (which, as explained above, are unknown and impossible to determine). An additional source of uncertainty comes from our use of 1999 year emissions inventories. Some HON facilities may have reduced their emissions since then to comply with other CAA and state requirements; others may have increased their emissions as a result of growth.

F. What is EPA proposing pursuant to CAA section 112(d)(6)?

Section 112(d)(6) of the CAA requires us to review and revise MACT standards, as necessary, every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time. This authority provides us with broad discretion to revise the MACT standards as we determine necessary, and to account for a wide range of relevant factors.

We do not interpret CAA section 112(d)6) as requiring another analysis of MACT floors for existing and new sources. Rather, we interpret the provision as essentially requiring us to

consider developments in pollution control in the industry (''taking into account developments in practices, processes, and control technologies''), and assessing the costs of potentially stricter standards reflecting those developments (69 FR 48351). As the U.S. Court of Appeals for the DC Circuit has found regarding similar statutory provisions directing EPA to reach conclusions after considering various enumerated factors, we read this provision as providing EPA with substantial latitude in weighing these factors and arriving at an appropriate balance in revising our standards. This discretion also provides us with substantial flexibility in choosing how to apply modified standards, if necessary, to the affected industry.

We took comment in two recently proposed residual risk rules on whether, when we make a low-risk finding under section 112(f) (as would occur under the first option proposed today), and ''barring any unforeseeable circumstances which might substantially change this source category or its emissions,'' we would need to conduct future technology reviews under CAA section 112(d)(6). See Proposed Rule: Magnetic Tape Manufacturing Operations, 70 FR 61417 (October 24, 2005); Proposed Rule: Industrial Process Cooling Towers, 70 FR 61411 (October 24, 2005). Earlier, in the final residual risk rule for Coke Ovens, we discussed the relationship between the findings underlying a section 112(f) determination and section 112(d)(6) revisions. National Emission Standards for Coke Oven Batteries, 70 FR 19992, 20009 (April 15, 2005). Today we further elaborate on how we expect we would address the need for future reviews under certain circumstances, and we refine our position regarding when revisions may be likely under section 112(d)(6). First, the Agency now interprets the language of section 112(d)(6) as being clear in requiring a periodic review no less frequently than every 8 years. We also believe that the periodic review should be of whatever section 112 standard applies to the relevant source category, regardless of whether the original section 112(d) and/or 112(h) NESHAP has, or has not, been revised pursuant to section 112(f)(2). We recognize that one could read the section 112(f)(2) language to authorize EPA's setting a standard under subsection (f)(2) separate from the NESHAP standard set under subsections (d) and/or (h). Following this reading, one might argue that any review under (d)(6) should be only of the (d)(2), (d)(4), or (d)(5) NESHAP standard, as applicable. It is our position, however, that the better reading of (f)(2) allows EPA to revise the relevant subsection (d) standard if the agency determines residual risk so justifies under (f)(2); indeed, our practice has been to follow this approach. See Coke Ovens, 70 FR 19993; 40 CFR 63.300–.311. This approach results in clearer and more effective implementation because only one part 63 NESHAP would apply to the source category, and is supported by the fact that section 112(d)(6) refers to ''emission standards promulgated under this *section*'' (emphasis added), as opposed to ''subsection,'' in defining the scope of EPA's authority to review and revise standards.

Although the language of section 112(d)(6) is nondiscretionary regarding periodic review, it grants EPA much discretion to revise the standards ''as necessary.'' Thus, although the specifically enumerated factors that EPA should consider all relate to technology (*e.g.*, developments in practices, processes and control technologies), the instruction to revise ''as necessary'' indicates that EPA is to exercise its judgment in this regulatory decision, and is not precluded from considering additional relevant factors, such as costs and risk. EPA has substantial discretion in weighing all of the relevant factors in arriving at the best balance of costs and emissions reduction and determining what further controls, if any, are necessary. This interpretation is consistent with numerous rulings by the U.S. Court of Appeals for the DC Circuit regarding EPA's approach to weighing similar enumerated factors under statutory provisions directing the agency to issue technology-based standards. *See, e.g. Husqvarna AB*, v. *EPA,* 254 F.3d 195 (DC Cir. 2001).

For example, when a section 112(d)(2) MACT standard alone obtains protection of public health with an ample margin of safety and prevents adverse environmental effects, it is unlikely that it would be ''necessary'' to revise the standard further, regardless of possible developments in control options.[3] Thus, the section 112(d)(6) review would not need to entail a robust technology assessment.

Two additional possible circumstances involving step 2 of the benzene analysis also could lead to a similar result. First, if, under step 2 of the benzene analysis, the ample margin of safety determination that resulted in lifetime cancer risks above 1-in-1 million based on emissions after implementation of the (d)(2) MACT standard was not founded at all on the availability or cost of particular control technologies and there was no issue regarding adverse environmental effect or health effects, and the facts supporting those analyses (*e.g.*, the public health and environmental risk) remain the same, it is unlikely that advances in air pollution control technology alone would cause us to revise the NESHAP because the existing regulations would continue to assure an adequate level of safety and protection of public health and prevention of adverse environmental effects.

Second, if, under step 2, we determined that additional controls were appropriate for ensuring an ample margin of safety and/or to prevent adverse environmental effects, and the revised standards resulted in remaining lifetime cancer risk for non-threshold pollutants falling below 1-in-1 million and for threshold pollutants falling below a similar threshold of safety and prevented adverse environmental effect, and the facts supporting those analyses (*e.g.*, the environmental and public health risks) remain the same, then it is unlikely that further revision would be needed. As stated above, under these circumstances we would probably not require additional emission reductions for a source category despite the existence of new or cheaper technology or control strategies, the exception possibly being the development of cost-effective technology that would greatly reduce or essentially eliminate the use or emission of a HAP. Therefore, in these situations, a robust technology assessment as part of a review under section 112(d)(6) may not be warranted.

Note that the circumstances discussed above presume that the facts surrounding the ample margin of safety and environmental analyses have not significantly changed. If there have been significant changes to fundamental aspects of the risk assessment then subsequent section 112(d)(6) reviews with robust technology assessments (and relevant risk considerations) may be appropriate.

Finally, if the availability and/or costs of technology were part of either the rationale for an ample margin of safety determination that resulted in lifetime cancer risk for non-threshold pollutants above 1-in-1 million (or for threshold pollutants falling below a similar threshold of safety) or affected the decision of whether to prevent adverse environmental effect, it is reasonable to conclude that changes in those costs or in the availability of technology could alter our conclusions, even if risk factors (*e.g.*, emissions profiles, RfC, impacts on

[3] Although, as discussed below, EPA might still consider developments that could be substantially reduce or eliminate risk in a cost-effective manner.

listed species) remained the same. Under these circumstances, subsequent section 112(d)(6) reviews with robust technology assessments (and relevant risk considerations) would be appropriate.

For HON process vents, storage vessels, process wastewater, and transfer operations, we are not aware of advances in control techniques that would achieve greater HAP emission reductions than the control technologies that are used to comply with the current HON rule. These technologies reduce HAP emissions by 95 to 98 percent for the various regulated emission points. The only feasible options for additional control would be to apply the existing HON reference technologies to some Group 2 emission points that are not required to be controlled by the current rule.

For equipment leaks, leakless components could be installed to reduce emissions from process equipment. Leakless components were considered during the development of the current rule and were determined not to represent MACT because of the high cost of replacing thousands of equipment components and concern that equipment was not available for all applications. The cost of leakless components has not substantially declined since the promulgation of the current rule. Therefore, we still consider the cost of leakless components to be infeasible for broad application throughout the industry.

Accordingly, for the section 112(d)(6) review, we considered the same regulatory alternatives described above for residual risk (table 2 of this preamble). Based on the information analyzed for the regulatory alternatives, we are proposing two options for emissions standards to satisfy the requirements of section 112(d)(6) review. The first proposed option is to maintain the current level of control in the HON (*i.e.*, the baseline option in table 3 of this preamble) with no further modifications, tracking the first proposed option for residual risk. The second proposed option corresponds to our second proposed option under our residual risk analysis and proposes the additional control requirements of Regulatory Alternative III. In the final rule, we expect to select one of these options, with appropriate modifications in response to public comments.

1. Rationale for Option 1

Under the first option we are proposing to make no changes to the current HON rule under our section 112(d)(6) authority. Section 112(d)(6)requires us to revise the NESHAP ''* * * as necessary (taking into account developments in practices, processes, and control technologies) * * *'' Our review found no new or improved control technologies or practices for reducing HAP emissions beyond the controls that are required by the current rule. Control costs have not declined significantly. We found no changes in industry production processes or practices that would lead to increased HAP emissions from HON processes.

Whether or not it is necessary to revise the current rule, therefore, depends on the benefits of imposing additional emission reductions and the associated cost. Option 2 would extend the applicability of the current HON control requirements to some emission points that currently are not subject to control requirements and would require more frequent monitoring of equipment leaks. These emission reductions would reduce cancer incidence by about 0.01 cases per year and reduce the HI below 1 for about 20 individuals. Because these controls would not reduce these particular factors significantly, Option 1 proposes that the additional control costs are not necessary under section 112(d)(6).

2. Rationale for Option 2

By requiring additional control of storage vessels, process vents, and equipment leaks, Option 2 (*i.e.*, Regulatory Alternative III) would reduce total HAP emissions by 1,700 tons/year. The capital costs are estimated at $14 million with annualized costs of $13 million. The second option has an average cost per ton of HAP of about $8,000 per ton HAP removed and an incremental cost per ton of HAP of $10,000 per ton HAP removed. Option 2 would satisfy the requirements of section 112(d)(6) because the controls have been demonstrated in practice and can be implemented at an annual cost of $13 million with no adverse energy or non-air environmental impacts. In addition, this second option would reduce the total number of people exposed to maximum lifetime cancer risks of at least 1-in-1 million by 450,000 and reduce cancer incidence by 0.01 cases per year (an average of one case every one hundred years). This option would apply controls only to CMPUs that emit HAP listed in table 38 of the proposed rule. We estimate that CMPUs that emit HAP not on table 38 of the proposed rule pose such low risk (*i.e.*, the current HON rule already protects public health with an ample margin of safety for these pollutants) that imposing any additional cost beyond the original MACT controls would not be necessary. These units pose no cancer risk, no significant noncancer risk, and no adverse ecological risks.

IV. Solicitation of Public Comments

A. Introduction and General Solicitation

We request comments on all aspects of the proposed rulemaking. All significant comments received during the public comment period will be considered in the development and selection of the final rulemaking.

B. Specific Comment and Data Solicitations

In addition to general comments on the proposed options (and, for Option 2, the proposed revised standards), we particularly request comments and data on the following issues:

1. Format of Control Alternatives

We request comment on the format of the proposed standards under Option 2 (*i.e.*, Regulatory Alternative III). We structured regulatory alternatives to build on the emission and risk reductions obtained by controlling storage vessels, process vents, and equipment leaks. The regulatory alternatives could have been structured differently (*e.g.*, as singular alternatives considering risk). We are requesting comments on other possible combinations of the proposed standards.

2. ''Low-risk'' Alternative Compliance Approach

We request comment on whether the final rule should incorporate a ''Low-risk'' approach that would allow a facility to demonstrate that the risks posed by HAP emissions from the HON affected sources (storage vessels, process vents, process wastewater, transfer operations, and equipment leaks) are below certain health effects thresholds. If sources demonstrate that risks are below these levels, then the requirements of proposed Option 2, if finalized, would not apply to them. Possible models for health-based approaches to use for HON sources are contained in 40 CFR part 63, subparts DDDD (Plywood and Composite Wood Products Manufacture NESHAP) and DDDDD (Industrial/Commercial/ Institutional Boilers and Process Heaters NESHAP).

Each facility that would choose to use the ''Low-risk'' approach would be required to determine maximum hourly emissions under worst-case operations and conduct a site-specific risk assessment that demonstrates that the HON CMPUs at the facility do not cause a maximum individual lifetime cancer risk exceeding 1-in-1 million, an HI

greater than 1, or any adverse environmental impacts.

For the risk assessment, facilities would be allowed to use any scientifically-accepted, peer-reviewed risk assessment methodology. An example of one approach for performing a site-specific compliance demonstration for air toxics can be found in the EPA's ''Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document'', which may be obtained through the EPA's Air Toxics Web site at *http://www.epa.gov/ttn/fera/risk_atoxic.html.*

At a minimum, the site-specific alternative compliance demonstration would have to:

- Estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations;
- Estimate the inhalation exposure for the individual most exposed to the facility's emissions;
- Use site-specific, quality-assured data wherever possible;
- Use health-protective default assumptions wherever site-specific data are not available, and;
- Document adequately the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emissions measurement expert.

To ensure compliance with the ''Low-risk'' alternative compliance demonstration, emission rates from the approved demonstration would be required to be included the facility's Title V permit as Federally enforceable emission limits. EPA requests comment on the possible means for approving such demonstrations (*e.g.*, by EPA affirmative review, by the State permitting authority, by EPA audit, by third-party, or by self-certification plus EPA audit), and on the risk thresholds that would be used for the basis of compliance demonstration. We are also requesting comment on the method of peer review for the site-specific risk assessments. We also request comment on the legal authority for such an approach, under sections 112(f)(2) and 112(d)(6), of tailoring the further emissions reduction requirement to apply only where it is specifically necessary to reduce risks to levels that assure public health is protected with an ample margin of safety.

3. Gas Imaging Equipment

The HON currently requires that emissions from leaking equipment be controlled using a leak detect and repair program (LDAR). The primary work practice currently employed to detect leaking equipment requires the use of a portable instrument to detect leaks of VOC or HAP at the leak interface of the equipment component. The instrument must meet the performance specifications of EPA Reference Method 21.

Under section 112(d)(6) of the CAA, EPA has the general authority to review and amend its regulations as appropriate and to provide additional work practice alternatives as new technology becomes available. In recent years, a new technology, known as gas imaging, has been developed that could be used to detect leaking components. The effective use of gas imaging technology may significantly reduce the costs of LDAR programs because owners or operators will be able to reduce the time necessary to monitor a component. The technology may also allow the identification of larger leaks more quickly than Method 21, thereby, allowing them to be repaired quicker, and ultimately decrease emissions.

Currently available gas imaging technologies fall into two general classes: active and passive. The active type uses a laser beam that is reflected by the background. The attenuation of the laser beam due to passing through a hydrocarbon cloud provides the optical image. The passive type uses ambient illumination to detect the difference in heat radiance of the hydrocarbon cloud.

The principle of operation of the active system is the production of an optical image by reflected (backscattered) laser light, where the laser wavelength is such that it is absorbed by the gas of interest. The system would illuminate the process unit with infrared light and a video camera-type scanner picks up the backscattered infrared light. The camera converts this backscattered infrared light to an electronic signal, which is displayed in real-time as an image. Since the scanner is only sensitive to illumination from the infrared light source and not the sun, the camera is capable of displaying an image in either day or night conditions.

The passive instrument has a tuned optical lens, which is in some respects like ''night-vision'' glasses. It selects and displays a video image of light of a particular frequency range and filters out the light outside of that frequency range. In one design, by superimposing the filtered light (at a frequency that displays VOC gas) on a normal video screen, the instrument (or camera) displays the VOC cloud in real time in relationship to the surrounding process equipment. The operator can see a plume of VOC gas emanating from a leak.

We are requesting comment on the appropriateness of allowing gas imaging technology as an alternative work practice for identifying leaking components. While gas imaging may be applicable to monitor leaking components at many source categories, we are specifically requesting comment on the application of gas imaging technology to CPMUs regulated by the HON.

4. Monitoring, Applicability, Implementation, and Compliance

Based on issues which have arisen over the past 14 years through inspections, requests for clarification, and discussions with industry, EPA has identified the following areas for which we solicit comments relating to monitoring, applicability, implementation, and compliance with the rule.

Liquid Streams from Control Devices: The EPA is clarifying that liquid streams generated from control devices (*e.g.*, scrubber effluent) are wastewater. Since the concept of wastewater does not exist until the point of determination (*i.e.*, where the liquid stream exits the CMPU), and a control device (*e.g.*, scrubber) is not specifically defined as part of the CMPU as a control device, there is an inconsistent understanding in the industry as to whether wastewater provisions apply.

Non-continuous Gas Streams from Continuous Operations: The EPA is clarifying that non-continuous vents from continuous HON unit operations (*i.e.*, reactors, distillation units, and air oxidation units) are subject to the HON if they are generated during the course of startup, shutdown, or malfunction. These are currently not specifically defined by either the HON or the MON since they are generated from continuous operations and are not batch process vents as defined in 40 CFR 63.101 or covered by 40 CFR 63.100(j)(4).

Boiler Requirements versus Fuel Gas System Requirements: The EPA solicits comment as to whether the need exists to have exclusions for boilers and exclusions for fuel gas systems. The EPA also proposes to include monitoring provisions and/or certifications that the boilers are compliant.

Group Status Changes for Wastewater: The Agency proposes to include language similar to 40 CFR 63.115(e), which requires a redetermination of TRE of process vents if process or operational changes occur for wastewater. Although § 63.100(m)

generally applies to Group 2 wastewater streams becoming Group 1, explicit language similar to § 63.115(e) that would require redetermination of group status for wastewater does not exist.

Leaking Components Found Outside of Regularly Scheduled Monitoring Periods: On October 12, 2004, the EPA issued a formal determination to Louisiana Department of Environmental Quality clarifying that subpart H of the HON requires that leaks found outside of the regularly scheduled monitoring period must be repaired, recorded, and reported as leaking components. The EPA proposes to incorporate clarifying edits to subpart H to make this explicit in the regulation.

Redetermination of Primary Product: Unlike other rules, such as the NESHAP for Polymers and Resins IV (40 CFR part 63, subpart JJJ), the HON does not have specific provisions for performing a periodic redetermination for a primary product. The EPA has issued formal applicability determinations for site specific situations clarifying that, at the point that a facility meets the applicability of the rule, they would be subject to the rule regardless of the lack of specific provisions for periodic redeterminations. The EPA proposes to codify procedures and compliance schedules for flexible operating units which have a change in primary product. The EPA intends to model the HON provisions after the NESHAP for Polymers and Resins IV which requires annual redetermination of a primary product for equipment which is not originally designated as part of a HON CMPU, but which produces HON products. Therefore, compliance with the HON for a flexible operating unit which previously produced a non-HON primary product would be required to be in compliance with the HON immediately upon determination that the primary product is a HON product.

Common Recovery Devices for Wastewater: The EPA clarifies that liquid streams routed to a recovery device receiving streams from multiple CMPU's would be wastewater. Under the HON, the concept of recovery is tied integrally to a specific CMPU. Additionally, a common recovery device serving multiple CMPU's would, by definition, be outside the CMPU. Therefore, streams routed to it would be considered wastewater discharged from the CMPU.

Net Positive Heating Value: The EPA proposes to define ''net positive heating value'' to incorporate the concept that, for fuel value, the stream must provide useful energy by using less energy to combust and produce a stable flame than would be derived from it. This difference must have a positive value when used in the context of ''recovering chemicals for fuel value'' (*e.g.*, in the definition of ''recovery device'').

Pressure Testing for Equipment Leaks: Based on field inspections, the Agency has found a poor correlation between the results of batch pressure testing and Method 21 results. It has been the Agency's experience that high leak rates are found by Method 21 results on components which routinely pass either a gas or liquid pressure test. Additionally, the annual pressure test frequency does not adequately address leaking components which are not otherwise disturbed and required to be tested on a more frequent basis. The Agency proposes to change the frequency of the pressure testing to quarterly and supplement the pressure tests with a statistical sample of Method 21 results.

V. Statutory and Executive Order Reviews

Because this notice proposes two options for rulemaking, the analysis conducted and determinations made in this section of the preamble are based on the option with the higher cost and regulatory burden.

A. Executive Order 12866: Regulatory Planning and Review

Under E.O. 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant,'' and therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the E.O. The E.O. defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

An economic impact analysis was performed to estimate changes in prices and output for affected HON sources and their consumers using the annual compliance costs estimated for proposed Option 2. This option would impose the highest costs of the alternatives considered. All estimates are for the fifth year after promulgation.

The price increases from the market reactions to the HON compliance costs are less than 0.02 percent, and the output changes are less than 0.01 percent. The affected output in this case includes major chemical and petroleum feedstocks for use in major chemical and refinery production. The small reductions in price and output reflect the relatively low cost of the proposal relative to the size of the affected industries. The overall annual social costs, which reflect changes in consumer and producer behavior in response to the compliance costs, are $3.77 million (2004 dollars). For more information, refer to the economic impact analysis report that is in the public docket for this rule.

Pursuant to the terms of E.O. 12866, this proposed rule has been determined to be a ''significant regulatory action'' because it raises novel legal and policy issues. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2222.01 and OMB Control Number XXXX–XXXX.

The ICR estimates the increased burden to industry that results from the proposed standards. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

For this rule, the increased burden is associated with developing and maintaining Group 2 storage vessel emission determinations and TRE

determinations for Group 2 process vents, and recording and maintaining equipment leak information. The projected hour burden is 4,500 hours at a cost of $104,000.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimate, and any suggested method for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2005–0475. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 14, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by July 14, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this notice.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as, (1) a small business as defined by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

For sources subject to this proposed rule, the relevant NAICS and associated employee sizes are listed below:

NAICS 32511—Petrochemical Manufacturing—1,000 employees or fewer.

NAICS 325192—Cyclic Crudes and Intermediates Manufacturing—750 employees or fewer.

NAICS 325199—All Other Organic Chemical Manufacturing—1,000 employees or fewer.

After considering the economic impacts of this proposal on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are businesses within the NAICS codes mentioned above. There are 51 ultimate parent businesses that will be affected by this proposal. Three of these businesses are small according to the SBA small business size standards. None of these three small firms will have an annualized compliance cost of more than 0.03 percent of sales associated with meeting the requirements of this proposed rule. For more information on the small entity impacts, please refer to the economic impact and small business analyses in the rulemaking docket.

Although the proposed rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless tried to reduce the impact of the proposed rule on small entities. When developing the HON proposal, EPA took special steps to ensure that the burdens imposed on small entities were reasonable. Our economic analysis indicates compliance costs are reasonable and no other adverse impacts are expected to the affected small businesses. The proposed rule will therefore not impose any significant additional regulatory costs on affected small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. The total capital costs for this proposed rule are approximately $14 million and the total annual costs are approximately $13 million. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by

State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have Federalism implications'' is defined in the E.O. 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.''

The proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. None of the affected SOCMI facilities are owned or operated by State governments. Thus, E.O. 13132 does not apply to the proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The proposed rule does not have tribal implications, as specified in E.O. 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. No tribal governments own SOCMI facilities subject to the HON. Thus, E.O. 13175 does not apply to the proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety risk of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the E.O. because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This conclusion is based on our assessment of the information on the effects on human health and exposures associated with SOCMI operations.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's final decision is not a ''significant energy action'' as defined in E.O. 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's final decision is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards. (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed rule revisions do not include technical standards beyond those already provided under the current rule. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance, agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that ''appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998)

The Agency has recently reaffirmed its commitment to ensuring environmental justice for all people, regardless of race, color, national origin, or income level. To ensure environmental justice, we assert that we shall integrate environmental justice considerations into all of our programs and policies, and, to this end have identified eight national environmental justice priorities. One of the priorities is to reduce exposure to air toxics. Since some HON facilities are located near minority and low-income populations, we request comment on the implications of environmental justice concerns relative to the two options proposed. While no exposed person would experience unacceptable risks under either of the proposed options, the distribution of risks is lower under option 2 than option 1 as reflected in table 3 of this preamble. We note, however, that the distributional impacts of the cost of option 2 were not quantified in our economic analysis.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 1, 2006.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart F—[Amended]

2. Amend § 63.100 by:

a. Revising paragraph (k) introductory text;

b. Revising paragraph (m) introductory text; and

c. Adding paragraph (r) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(k) Except as provided in paragraphs (l), (m), (p), and (r) of this section, sources subject to subparts F, G, or H of this part are required to achieve compliance on or before the dates specified in paragraphs (k)(1) through (k)(8) of this section.

* * * * *

(m) Before [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL**

REGISTER], if a change that does not meet the criteria in paragraph (l)(4) of this section is made to a chemical manufacturing process unit subject to subparts F and G of this part, and the change causes a Group 2 emission point to become a Group 1 emission point (as defined in § 63.111 of subpart G of this part), then the owner or operator shall comply with the requirements of subpart G of this part for the Group 1 emission point as expeditiously as practicable, but in no event later than 3 years after the emission point becomes Group 1. After [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the owner or operator subject to this paragraph must comply with subpart G of this part no later than three years after the emission point becomes a Group 1 emission point (as defined in § 63.111 of subpart G of this part).

* * * * *

(r) *Compliance with standards to protect public health and the environment.* On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the owner or operator must comply with the provisions of paragraphs (r)(1) and (r)(2) of this section to protect public health and the environment.

(1) *Process vents and storage vessels.* On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the definitions of Group 1 process vent and Group 1 storage vessel change such that some Group 2 emission points may become Group 1 emission points. Notwithstanding the provisions of paragraph (k) of this section, any existing Group 2 process vent or Group 2 storage vessel that becomes a Group 1 emission point on [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] as a result of the revised definition must be in compliance with subparts F and G of this part no later than [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**]. New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must be in compliance with subparts F and G of this part upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

(2) *Equipment leaks.* On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], an existing chemical manufacturing process unit containing at least one HAP from table 38 of subpart G of part 63, that is subject to § 63.168 of subpart H of this part (Standards: Valves in gas/vapor service and light liquid service) must comply with paragraph (k) in § 63.168 of subpart H of this part no later than [DATE ONE YEAR AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**]. New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must be in compliance with subparts F and G of this part upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

Subpart G—[Amended]

3. Amend § 63.110 by revising paragraphs (b)(3) and (i)(1)(i) and (ii) to read as follows:

§ 63.110 Applicability.

* * * * *

(b) * * *

(3) On or after the compliance dates specified in § 63.100 of subpart F of this part, a Group 2 storage vessel that is also subject to the provisions of 40 CFR part 61, subpart Y is required to comply only with the provisions of 40 CFR part 61, subpart Y. The recordkeeping and reporting requirements of 40 CFR part 61, subpart Y will be accepted as compliance with the recordkeeping and reporting requirements of this subpart. On or after [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the owner or operator must also keep records of the emissions of hazardous air pollutants listed in table 38 of this subpart as specified in § 63.123(b). New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must keep records of the emissions of hazardous air pollutants listed in table 38 of this subpart as specified in § 63.123(b) upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

* * * * *

(i) * * *

(1) * * *

(i) For Group 1 and Group 2 process vents, 40 CFR part 65, subpart D, satisfies the requirements of §§ 63.102, 63.103, 63.112 through 63.118, 63.148, 63.151, and 63.152. On or after [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], for process vents emitting a hazardous air pollutant listed in table 38 of this subpart, a TRE value of 4.0 replaces references to a TRE value of 1.0 in 40 CFR part 65, except in 40 CFR 65.62(c), and requirements for Group 1 process vents in 40 CFR part 65 also apply to Group 2A process vents. The provisions of this paragraph apply to new sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

(ii) For Group 1 storage vessels, 40 CFR part 65, subpart C satisfies the requirements of §§ 63.102, 63.103, 63.112, 63.119 through 63.123, 63.148, 63.151, and 63.152. On or after [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the owner or operator must also keep records specified in § 63.123(b). New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must keep records of the emissions of hazardous air pollutants listed in table 38 of this subpart as specified in § 63.123(b) upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

* * * * *

4. Amend § 63.111 by revising the following definitions of Group 1 process vent, Group 2 process vent, and Group 1 storage vessel to read as follows:

§ 63.111 Definitions.

* * * * *

Group 1 process vent means a process vent for which the vent stream flow rate is greater than or equal to 0.005 standard cubic meter per minute, the total organic hazardous air pollutant concentration is greater than or equal to 50 ppmv, and the total resource effectiveness index value, calculated according to § 63.115, is less than or equal to 1.0. On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], a Group 1 process vent also means a process vent for which the vent stream flow rate is greater than or equal to 0.005 standard cubic meters per minute, the total organic HAP concentration is greater than or equal to 50 ppmv, the process vent contains at least one hazardous air pollutant listed in table 38 of this subpart, and the total resource effectiveness index value, calculated according to § 63.115, is less than or equal to 4.0.

Group 2 process vent means a process vent that does not meet the definition of Group 1 process vent.

Group 1 storage vessel means a storage vessel that meets the criteria for design storage capacity and stored-liquid maximum true vapor pressure specified in table 5 of this subpart for storage vessels at existing sources, and in table 6 of this subpart for storage vessels at new sources. On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], a Group 1 storage vessel also means a storage vessel that stores at least 1 hazardous air pollutant listed in table 38 of this subpart, and has a total hazardous air pollutant emission rate greater than 4.54 megagrams per year.

* * * * *

5. Amend § 63.113 by revising paragraphs (a)(3) and (d) to read as follows:

§ 63.113 Process vent provisions—reference control technology.

(a) * * *

(3) Comply with paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section.

(i) Prior to [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release of the vent stream to the atmosphere if no recovery device is present. If the TRE index value is greater than 1.0, the process vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable.

(ii) On or after [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], for process vents containing a hazardous air pollutant listed in table 38 of this subpart, achieve and maintain a TRE index value greater than 4.0 at the outlet of the final recovery device, or prior to release of the vent stream to the atmosphere if no recovery device is present. If the TRE index value is greater than 4.0, the process vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable. The provisions of this paragraph apply to new sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] on or after [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

(iii) On or after [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], for process vents not containing a hazardous air pollutant listed in table 38 of this subpart, achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release of the vent stream to the atmosphere if no recovery device is present. If the TRE index value is greater than 1.0, the process vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable. The provisions of this paragraph apply to new sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

* * * * *

(d) The owner or operator of a Group 2 process vent meeting the conditions of paragraphs (d)(1) or (d)(2) shall maintain a TRE index value greater than 1.0 and shall comply with the monitoring of recovery device parameters in § 63.114(b) or (c) of this subpart, the TRE index calculations of § 63.115 of this subpart, and the applicable reporting and recordkeeping provisions of §§ 63.117 and 63.118 of this subpart. Such owner or operator is not subject to any other provisions of §§ 63.114 through 63.118 of this subpart.

(1) Prior to [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the process vent has a flow rate greater than or equal to 0.005 standard cubic meters per minute, a hazardous air pollutant concentration greater than or equal to 50 parts per million by volume, and a TRE index value greater than 1.0 but less than or equal to 4.0.

(2) On or after [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the process vent does not emit any hazardous air pollutants listed in table 38 of this subpart, but has a flow rate greater than or equal to 0.005 standard cubic meters per minute, a hazardous air pollutant concentration greater than or equal to 50 parts per million by volume, and a TRE index value greater than 1.0 but less than or equal to 4.0

* * * * *

6. Amend § 63.114 by revising paragraphs (b) introductory text and (c)(2) to read as follows:

§ 63.114 Process vent provisions—monitoring requirements.

* * * * *

(b) Each owner or operator of a Group 2 process vent that complies by following § 63.113(a)(3) or § 63.113(d) of this subpart that uses one or more recovery devices shall install either an organic monitoring device equipped with a continuous recorder or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. Monitoring is not required for process vents with TRE index values greater than 4.0 as specified in § 63.113(e) of this subpart.

* * * * *

(c) * * *

(2) Complies by following the requirements of § 63.113(a)(3) or § 63.113(d), and maintains a TRE greater than 1.0 but less than or equal to 4.0 without a recovery device or with a recovery device other than the recovery devices listed in paragraphs (a) and (b) of this section; or

* * * * *

7. Amend § 63.115 by revising paragraph (e)(2) to read as follows:

§ 63.115 Process vent provisions—methods and procedures for process vent group determination.

* * * * *

(e) * * *

(2) Where a process vent with the recalculated TRE index value meets the Group 1 definition, or where the recalculated TRE index value, flow rate, or concentration meet the specifications of § 63.113(d) of this subpart, the owner or operator shall submit a report as specified in § 63.118 (g), (h), (i), or (j) of this subpart and shall comply with the appropriate provisions in § 63.113 of this subpart by the dates specified in § 63.100 of subpart F of this part.

* * * * *

8. Amend § 63.117 by revising paragraph (a) introductory text and paragraph (a)(7) introductory text to read as follows:

§ 63.117 Process vent provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests.

(a) Each owner or operator subject to the provisions for process vents with a TRE index value less than or equal to 4.0 shall:

* * * * *

(7) Record and report the following when achieving and maintaining a TRE index value of 4.0 or less, as specified in § 63.113(a)(3) or § 63.113(d) of this subpart:

* * * * *

9. Amend § 63.118 by revising paragraphs (b) introductory text, paragraph (c) introductory text, and paragraph (h) introductory text to read as follows:

§ 63.118 Process vent provisions—periodic reporting and recordkeeping requirements.

* * * * *

(b) Each owner or operator using a recovery device or other means to achieve and maintain a TRE index value less than or equal to 4.0 as specified in § 63.113(a)(3) or § 63.113(d) of this subpart shall keep the following records up-to-date and readily accessible:

* * * * *

(c) Each owner or operator subject to the provisions of this subpart and who elects to demonstrate compliance with the TRE index value greater than 4.0 under § 63.113(e) of this subpart or less than or equal to 4.0 under § 63.113(a)(3) or § 63.113(d) of this subpart shall keep up-to-date, readily accessible records of:

* * * * *

(h) Whenever a process change, as defined in § 63.115(e) of this subpart, is made that causes a Group 2 process vent with a TRE greater than 4.0 to become a Group 2 process vent with a TRE less than or equal to 4.0, the owner or operator shall submit a report within 180 calendar days after the process change. The report may be submitted as part of the next periodic report. The report shall include:

* * * * *

10. Amend § 63.119 by revising paragraph (a)(1) and (a)(2) to read as follows:

§ 63.119 Storage vessel provisions—reference control technology.

(a) * * *

(1) For each Group 1 storage vessel storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is less than 76.6 kilopascals, the owner or operator shall reduce hazardous air pollutants emissions to the atmosphere either by operating and maintaining a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, a closed vent system and control device, routing the emissions to a process or a fuel gas system, or vapor balancing in accordance with the requirements in paragraph (b), (c), (d), (e), (f), or (g) of this section, or equivalent as provided in § 63.121 of this subpart.

(2) For each Group 1 storage vessel storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is greater than or equal to 76.6 kilopascals, the owner or operator shall operate and maintain a closed vent system and control device meeting the requirements specified in paragraph (e) of this section, route the emissions to a process or a fuel gas system as specified in paragraph (f) of this section, vapor balance as specified in paragraph (g) of this section, or equivalent as provided in § 63.121 of this subpart.

* * * * *

11. Amend § 63.120 by revising paragraph (b)(1)(iv) to read as follows:

§ 63.120 Storage vessel provisions—procedures to determine compliance.

* * * * *

(b) * * *

(1) * * *

(iv) If any storage vessel ceases to store organic hazardous air pollutants for a period of 1 year or more, or if the storage vessel ceases to meet the definition of a Group 1 storage vessel for a period of 1 year or more, then measurements of gaps between the vessel wall and the primary seal, and gaps between the vessel wall and the secondary seal, shall be performed within 90 calendar days of the vessel being refilled with organic hazardous air pollutants.

* * * * *

12. Amend § 63.123 by adding paragraph (b) to read as follows.

§ 63.123 Storage vessel provisions—recordkeeping.

* * * * *

(b) On or after [DATE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], an owner or operator must keep records of the uncontrolled hazardous air pollutant emissions from each Group 2 storage vessel, containing at least one hazardous air pollutant listed in table 38 of this subpart, on a 12-month rolling average. Calculate uncontrolled hazardous air pollutant emissions (ES_{iu}) using the equations and procedures in § 63.150(g)(3)(i). The provisions of this paragraph apply to new sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

* * * * *

13. Amend § 63.150 by revising paragraph (g)(2)(iii)(B)(2) to read as follows:

§ 63.150 Emissions averaging provisions

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) * * *

(*2*) For determining debits from Group 1 process vents, recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $EPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final recovery device. However, as provided in § 63.113(a)(3), a Group 1 process vent may add sufficient recovery to raise the TRE index value to a level such that the vent becomes a Group 2 process vent.

* * * * *

14. Amend the appendices to subpart G by adding Table 38 to subpart G of part 63—List of Hazardous Air Pollutants Subject to Additional Requirements to Protect Public Health and the Environment.

Pollutant	CAS No.
1,1,2,2-Tetrachloroethane	79345
1,1,2-Trichloroethane	79005
1,2-Diphenylhydrazine	122667
1,3-Butadiene	106990
1,3-Dichloropropene	542756
1,4-Dioxane	123911
2,4-Dinitrotoluene	121142
2,4-Toluene diamine	95807
2,4-Toluene diisocyanate	584849
2-Nitropropane	79469
3,3'-Dichlorobenzidine	91941
3,3'-Dimethylbenzidine	119937
Acetaldehyde	75070
Acetamide	60355
Acrolein	107028
Acrylamide	79061
Acrylonitrile	107131
Allyl chloride	107051
Aniline	62533
Benzene	71432
Benzotrichloride	98077
Benzyl chloride	100447
Bis (chloromethyl) ether	542881
Bromoform	75252
Carbon tetrachloride	56235
Chrysene	218019
Dichloroethyl ether	111444
Epichlorohydrin	106898
Ethyl acrylate	140885
Ethylene dibromide	106934
Ethylene dichloride	107062
Ethylene oxide	75218
Ethylidene dichloride	75343
Formaldehyde	50000
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Isophorone	78591
Maleic anhydride	108316
Methyl bromide	74839
Methyl tert-butyl ether	1634044
Methylene chloride	75092
Naphthalene	91203
o-Toluidine	95534
p-Dichlorobenzene	106467
Propylene dichloride	78875
Propylene oxide	75569
Tetrachloroethene	127184
Trichloroethylene	79016

Pollutant	CAS No.
Vinyl chloride	75014

Subpart H—[Amended]

15. Amend § 63.160 by revising paragraph (g)(1)(i) and (g)(1)(ii) to read as follows:

§ 63.160 Applicability and designation of source.

* * * * *

(g) * * *

(1) * * *

(i) For equipment, 40 CFR part 65 satisfies the requirements of §§ 63.102, 63.103, and 63.162 through 63.182. When choosing to comply with 40 CFR part 65, the requirements of § 63.180(d) continue to apply. On or after [DATE ONE YEAR AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], owners or operators must comply with the valve monitoring frequencies and valve leak frequencies in § 63.168(k) instead of § 65.106(b)(3) for processes that contain at least one hazardous air pollutant listed in table 38 of subpart F. New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must comply with the valve monitoring frequencies and valve leak frequencies in § 63.168(k) instead of § 65.106(b)(3) for processes that contain at least one hazardous air pollutant listed in table 38 of subpart F upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

(ii) For Group 1 and Group 2 process vents, Group 1 and Group 2 storage vessels, and Group 1 transfer operations, comply with § 63.110(i)(1).

* * * * *

16. Amend § 63.168 by revising paragraph (a) introductory text and adding paragraph (k) to read as follows:

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

(a) The provisions of this section apply to valves that are either in gas service or in light liquid service. On or after [DATE ONE YEAR AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] the owner or operator of a process unit containing at least one HAP from table 38 of subpart G of part 63, must comply with monitoring frequency and leak frequency requirements in paragraph (k) of this section. New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must comply with the provisions of this paragraph upon start-up or by [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

* * * * *

(k) On or after [DATE ONE YEAR AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], the owner or operator of a source subject to this subpart shall monitor all valves at process units containing at least one HAP from table 38 of subpart G of part 63, except as provided in § 63.162(b) of this subpart and paragraphs (h) and (i) of this section, at the intervals specified in paragraph (k)(2) of this section and shall comply with all other provisions of this section, except as provided in §§ 63.171, 63.177, 63.178, and 63.179 of this subpart. New sources that commence construction or reconstruction after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] must comply with the provisions of this paragraph by upon start-up or [DATE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], whichever is later.

(1) The valves shall be monitored to detect leaks by the method specified in § 63.180(b) of this subpart. The instrument reading that defines a leak is 500 parts per million.

(2) The owner or operator shall monitor valves for leaks at the intervals specified in paragraphs (k)(2)(i) through (k)(2)(v) of this section. Monitoring data generated before [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], may be used to qualify for less frequent monitoring under paragraphs (k)(2)(ii) through paragraphs (k)(2)(v) of this section.

(i) At process units with 0.5 percent or greater leaking valves, calculated according to paragraph (e) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than 0.5 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in paragraphs (k)(2)(iii) through (k)(2)(v) of this section.

(iii) At process units with less than 0.5 percent leaking valves over two consecutive quarters, the owner or operator may elect to monitor each valve once every 2 quarters.

(iv) At process units with less than 0.5 percent leaking valves over three out of four consecutive quarters, the owner or operator may elect to monitor each valve once every 4 quarters.

(v) At process units with less than 0.25 percent leaking valves over two consecutive periods, the owner or operator may elect to monitor each valve once every two years.

[FR Doc. 06–5219 Filed 6–13–06; 8:45 am]

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Federal Register

Wednesday,
June 14, 2006

Part III

Department of Housing and Urban Development

Community Development Block Program—Notices of Waivers, Alternative Requirements, and Statutory Program Requirements; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–02]

Waivers Granted to and Alternative Requirements for the State of Alabama's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Alabama for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Alabama also notes statutory provisions affecting program design and implementation.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410–7000, telephone (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriates $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Alabama received an allocation of $74,388,000 from this appropriation. The Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The law further provides that the Secretary may waive the requirement that activities benefit persons of low and moderate income, except that at least 50 percent of the funds granted must benefit primarily persons of low and moderate income unless the Secretary otherwise makes a finding of compelling need. The following waivers and alternative requirements are in response to written requests from the State of Alabama.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*, Title I of the Housing and Community Development Act of 1974, as amended, (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Alabama grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This *Descriptions* section also highlights some of the statutory items and alternative requirements described in the sections that follow.

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Alabama. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility

Eligibility—housing related. The waiver that allows new housing construction and payment of up to 100 percent of a housing downpayment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disasters eligible under this notice.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore the Department is removing the eligibility requirement that CDBG disaster recovery assisted planning only grants or state directly administered planning activities that will guide recovery in

accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act, as amended, specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

HUD is providing a limited waiver of the relocation requirements. HUD will work with the state to provide additional waivers if the grantee moves forward to fund a flood buyout program with both HUD and FEMA funds and requires the waivers to develop a workable program design.

HUD is waiving the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe.

HUD is also waiving the relocation benefits requirements contained in Section 104(d) 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by federal projects.

Timely Distribution of Funds

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Alabama to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

(a) Program income. (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a tribe or a subrecipient of a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (*e.g.*, a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act.

(3) The state may permit the unit of general local government or tribe that receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

2. Housing-related eligibility waivers. 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the downpayment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. Planning requirements. For CDBG disaster recovery assisted planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

4. Waiver and modification of the anti-pirating clause to permit assistance to help a business return. 42 U.S.C 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

5. Waiver of one-for-one replacement of units damaged by disaster. 42 U.S.C. 5301(d)(2) and (d)(3) are waived to remove the one-for-one replacement requirements for occupied and vacant occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing, and 24 CFR 42.350, to the extent that these regulations differ from the regulations contained in 49 CFR part 24. These requirements are waived provided the grantee assures HUD it will use all resources at its disposal to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

6. Waiver of requirement for timely distribution of funds. 24 CFR 570.494 regarding timely distribution of funds is waived.

Notes on Applicable Statutory Requirements

7. Note Notes on flood buyouts:

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated

and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) prohibits flood disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable federal law with respect to such property.

(c) Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor must reimburse the federal government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

e. The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' The prohibition in subparagraph (1) above applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.*, earthquakes, fire, wind, etc.). The term ''flood disaster area'' is defined in section 582(d)(2) to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

8. Non-Federal Cost Sharing of Army Corps of Engineers Projects. Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500.

Dated: May 26, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–5381 Filed 6–9–06; 9:06 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–04]

Waivers Granted to and Alternative Requirements for the State of Louisiana's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Louisiana for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Rita in 2005. On February 13, 2006, HUD published an allocation and application notice applicable to this grant and four others under the same appropriation. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice

for the State of Louisiana also notes statutory provisions affecting program design and implementation.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Fax inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriates $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Louisiana received an allocation of $6,200,000,000 from this appropriation. The 2006 Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following waivers and alternative requirements are in response to written requests from the State of Louisiana. The Secretary is still considering additional requests related to the state's pending action plan amendment; any granted waivers related to those requests will be published later.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*, Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Louisiana grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This *Descriptions* section also highlights some of the statutory items and alternative requirements described in the sections that follow.

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Louisiana. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility and National Objectives

Eligibility—buildings for the general conduct of government. The state requested a limited waiver of the prohibition on funding buildings for the general conduct of government. HUD considered the request and agreed that it is consistent with the overall purposes of the 1974 Act for the state to be able to use the grant funds under this notice to fund the local and state government match for critical FEMA Public-Assistance projects that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore the Department is removing the eligibility requirement that CDBG disaster recovery assisted planning only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Special economic development job retention activities. Under the public benefit implementing regulations, CDBG grantees are limited to a specified annual amount of CDBG assistance per job retained or created or amount of CDBG assistance per low- and moderate-income person to whom goods or services are provided by the assisted activity. Grantees must maintain documentation to show that a job is a retained job or a created job and that the job was made available to or taken by a low- and moderate-income person. This policy and the specified documentation work well and are suitable for relatively small-scale economic development programs of hundreds of thousands or a few millions of dollars and tens or hundreds of businesses. The State of Louisiana plans to undertake a special economic development portfolio whose size will exceed $200 million and serve thousands of businesses. The state has requested regulatory waivers related to public benefit documentation that will help it to implement the bridge loan

program's large-scale disaster recovery special economic development activities in a short timeframe.

Eligibility—housing related. The waiver that allows new housing construction and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disasters eligible under this notice.

Compensation for disaster-related losses or housing incentives to resettle in Louisiana. The state plans to provide compensation to certain homeowners whose homes were damaged during the covered disasters, if the homeowners agree to meet the stipulations of the published program design. The state may also offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The Department is waiving the 1974 Act and associated regulations to make these uses of grant funds eligible.

Eligibility—tourism. The state plans to provide disaster recovery grant assistance to support the tourism industry and promote travel to communities in the disaster-impacted areas and has requested an eligibility waiver for such activities. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, Congress did make such support eligible, within limits, for the CDBG disaster recovery funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks, and HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. However, because the State of Louisiana is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the waiver will permit use of no more than $30 million for assistance for the tourism industry, the assisted activities must be designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita, and the waiver will expire two years after the date of this notice, after which previously ineligible support for the tourism industry, such as marketing a community as a whole, will again be ineligible for CDBG disaster recovery funding.

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

The state plans to carry out voluntary acquisition and optional relocation activities (partly in a form sometimes called ''buyouts'') and has requested waivers related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (the URA) and the replacement of housing and relocation assistance provisions under section 104(d) of the 1974 Act. The state asked that HUD permit the waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner. The state believes that these waivers will have little impact on those persons whose property is voluntarily acquired or who are required to move permanently for a federally assisted project.

CDBG funds are Federal financial assistance so their use in projects that involve acquisition of property necessary for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the government wide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by Federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

- The acquisition requirements of the URA and implementing regulations so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. According to the state, the failure to suspend these requirements would impede disaster recovery and may result in windfall payments.
- A limited waiver of the URA implementing regulations to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.
- The URA and implementing regulations to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental

housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.*, Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change provides access to an additional relocation resource option.

• The URA and implementing regulations to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD is waiving requirements of section 104(d) of the 1974 Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe. HUD is also waiving the relocation assistance requirements contained in section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by Federal projects.

The state has provided the following additional reason for these waivers related to its decision to administer policy for the funds under this notice and for FEMA mitigation funding through the same agencies. The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and that agency will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv) and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment by allowing the URA benefits requirements to be the standard for assistance under this notice.

Timely Distribution of Funds

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Louisiana to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead. a. Program income. (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a Tribe or a subrecipient of a unit of general local government or a Tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (*e.g.*, a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover

all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(3) The state may permit the unit of general local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or Tribe.

(A) Program income that is received and retained by the unit of general local government or Tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or Tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or Tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or Tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or Tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian Tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

2. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. *Compensation for loss of housing or incentives to resettle in Louisiana.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Louisiana or compensation for loss of housing caused by the disaster and in accordance with the state's approved Action Plan and published program design.

4. *Planning requirements.* For CDBG disaster recovery assisted planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

5. *Waiver to permit some activities in support of the tourism industry.* 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived to the extent necessary to make eligible use of no more than $30 million for assistance for the tourism industry, including promotion of a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita. This waiver will expire two years after the date of this notice, after which previously ineligible support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

6. *Waiver and modification of the anti-pirating clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina or Rita, as applicable, and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

7. *Waiver of one-for-one replacement of units damaged by disaster.* a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for low- and moderate-income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A), and 24 CFR 42.359 are waived to the extent they differ from those of the URA and its implementing regulations at 49 CFR part 24.

8. *Uniform Relocation Act requirements.* The state may apply the

following waivers to activities involving buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by this notice and included in an approved Action Plan.

a. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

b. The requirements at 49 CFR 24.2, 24.402(b)(2) and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of ''demonstrable hardship.''

c. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.*, Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

d. The requirements of section 202(b) of the URA and 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

9. *Public benefit for the bridge loan activities.* For the state's bridge loan activities included in an approved Action Plan for Disaster Recovery and governed by the provisions of 24 CFR 570.482 and 483, public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), (6) are waived, with the following alternative requirements. The grantee shall report and maintain documentation on the bridge-loan-assisted creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

10. *Waiver of State CDBG requirement for timely distribution of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

11. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) and 24 CFR 507.207(a)(1) are waived to the extent necessary to allow the state to use the grant funds under this notice to fund the local and state government match for critical FEMA Public-Assistance projects that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

Notes on Applicable Statutory Requirements

12. *Note on the eligibility of providing funds to Enterprise and LISC for certain purposes.* The appropriations statute provides that the States of Louisiana and Mississippi may each use up to $20,000,000 (with up to $400,000 each for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 42 U.S.C. 12805 note), including demolition, site clearance and remediation, and program administration.

13. *Notes on rules applicable to flood buyouts activities:*

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future Federal assistance to owners remaining in floodplain. (1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) (Section 582) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to

notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage. The transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

e. The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' The prohibition in subparagraph (1) above applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.*, earthquakes, fire, wind, etc.). The term ''flood disaster area''' is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

14. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Public Law 105–276, title II, October 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: May 26, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–5383 Filed 6–9–06; 9:06 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–03]

Waivers Granted to and Alternative Requirements for the State of Mississippi's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grants (CDBG) disaster recovery grant provided to the State of Mississippi for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006 applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Mississippi also notes statutory provisions affecting program design and implementation.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410–7000, telephone (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Fax inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriates $11.5 billion in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Mississippi received an allocation of $5,058,185,000 from this appropriation. The 2006 Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The law further provides that the Secretary may waive the requirement that activities benefit persons of low and moderate income,

except that at least 50 percent of the funds granted must benefit primarily persons of low and moderate income unless the Secretary otherwise makes a finding of compelling need. The following waivers and alternative requirements are in response to written requests from the State of Mississippi.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*, Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Mississippi grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under the 2006 Act were published in a prior notice (71 FR 7666, published February 13, 2006).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary.

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Mississippi. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility

Eligibility—housing related. The waiver that allows new housing construction and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disasters eligible under this notice.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients of planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore the Department is removing the eligibility requirement that CDBG disaster recovery assisted planning only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Compensation for disaster-related losses. The state plans to provide compensation to homeowners who lived outside the floodplain and whose homes were damaged by flooding during the covered disasters, if the homeowners agree to meet the stipulations of the published program design. The Department is waiving the 1974 Act and associated regulations to make this use of grant funds eligible.

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether or not a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

HUD is providing a limited waiver of the relocation requirements. HUD may provide additional waivers on a case-by-case basis if the grantee chooses to fund a flood buyout program with both HUD and Federal Emergency Management Agency (FEMA) funds and requires the waivers to develop a workable program design.

HUD is waiving the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may

cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe. HUD is also waiving the relocation benefits requirements contained in Section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by federal projects.

Overall Benefit

The State of Mississippi has asked the Secretary to waive the requirement that 50 percent of the CDBG funds received by the state under this grant be for activities that benefit persons of low and moderate income (*see* 71 FR 7666, published February 13, 2006, for the waiver granted to the original 70 percent requirement) so that the state may carry out the activity of compensation for housing loss, the costs of which will consume the majority of its grant, in an ''income-blind'' manner because the disaster affected households without regard to income. HUD and the state have examined the available post-disaster housing need data, and HUD agrees that one of the state's compelling needs for assistance in the disaster-affected area is to help re-establish homeowners outside the floodplain who suffered major uninsured flood damage. (The state has designated this as its ''primary need.'') The state has agreed to examine other housing needs and to pursue other sources of funding to provide assistance for other compelling housing needs, such as for homeless and special needs populations, for low-income renters, and for uninsured low-income homeowners. HUD considered the data and the state's justification for its request. Based on the compelling need presented, HUD is granting the state a waiver of the requirement that at least 50 percent of the supplemental CDBG grant funds primarily benefit persons of low and moderate income, to the extent necessary to permit Mississippi to carry out the activities contained in its March 31, 2006, action plan submission, provided that the state must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income. Because the data and HUD experience indicate that it is possible that the actual operations of the grant may produce a result in conformance with the 50 percent overall benefit requirement, HUD expects the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit.

Timely Distribution of Funds

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use its disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Mississippi to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Program income waivers and alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

(a) Program income. (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a tribe or a subrecipient of a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (*e.g.*, a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act.

(3) The state may permit the unit of general local government or tribe that receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster

Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government that could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

2. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. *Compensation for loss of housing.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow compensation for unreimbursed loss of housing caused by the disaster. The grantee must undertake any compensation activity in accordance with the state's approved action plan and published program design.

4. *Planning requirements.* For CDBG disaster-recovery-assisted general planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

5. *Waiver and modification of the anti-pirating clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482(h) are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

6. *Waiver of one-for-one replacement of units damaged by disaster.* 42 U.S.C. 5301(d)(2) and (d)(3) are waived to remove the one-for-one replacement requirements for occupied and vacant occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing, and 24 CFR 42.350, to the extent that these regulations differ from the regulations contained in 49 CFR part 24. These requirements are waived provided the grantee assures HUD it will use all resources at its disposal to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

7. *Overall benefit.* 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the overall benefit requirement are waived for the CDBG disaster recovery grant covered by this notice to the extent necessary to permit Mississippi to carry out the activities contained in its March 31, 2006, action plan submission, provided that the state must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income. HUD expects the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit.

8. *Waiver of requirement for timely distribution of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

9. *Note on the eligibility of providing funds to Enterprise and LISC for certain purposes.* The appropriations statute provides that the states of Louisiana and Mississippi may each use up to $20,000,000 (with up to $400,000 each for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 42 U.S.C. 12805 note), including demolition, site clearance and remediation, and program administration.

10. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Public Law 105–276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the

heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: May 26, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–5382 Filed 6–9–06; 8:45 am]

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June 14, 2006

Part IV

Department of Housing and Urban Development

24 CFR Part 3282
Manufactured Housing Consensus Committee—Rejection of Subpart I Proposal; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–5072–N–01]

Manufactured Housing Consensus Committee—Rejection of Subpart I Proposal

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of rejection of Manufactured Housing Consensus Committee recommendation of proposed regulation.

SUMMARY: The Manufactured Housing Consensus Committee (MHCC) has submitted to HUD recommended regulatory text that would revise HUD's current Subpart I regulations that implement statutory requirements concerning how manufacturers and others address reports of problems with manufactured homes, including notifications to consumers and correction of safety defects and of homes that fail to meet the Federal construction and safety standards. The National Manufactured Housing Construction and Safety Standards Act of 1974 expressly limits HUD to either accepting such an MHCC recommendation in its entirety for publication as a proposed rule, or rejecting the recommendation, providing the MHCC a written explanation of the reasons for rejection, and publishing in the **Federal Register** the rejected proposal, the reasons for rejection, and any recommended modifications. The Secretary commends the careful work of the MHCC on this initiative and would accept almost all of the MHCC's recommendation. HUD has met with the MHCC numerous times on these regulations, and the Department and the MHCC have worked together to draft a clear and comprehensive revision of these regulations. However, because HUD believes that certain language included in the MHCC recommendation is contrary to the statute, HUD cannot accept the proposal. Nevertheless, in accordance with a different statutory procedure that is available, and in an effort to resolve the remaining differences between what HUD could accept and what was included in the MHCC recommendation, HUD has also submitted to the MHCC for its review a HUD proposal for revision of subpart I that is based on the MHCC recommendation, with a few modifications as discussed in this notice.

As required by the statute, the full text of the MHCC's recommendation is set forth in this notice for informational purposes, along with HUD's reasons for not accepting all of the recommendations and an explanation of the modifications HUD has suggested to the MHCC. A set of principles that the MHCC drafted to guide its development of its recommendation is also set out in this notice. In accordance with statutory procedure, after HUD has received the MHCC's comments on HUD's proposal to revise Subpart I and HUD has considered those comments, HUD expects to publish separately a proposed rule revising Subpart I for public comment.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs, Office of Regulatory Affairs and Manufactured Housing, Room 9164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–6401 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8389.

SUPPLEMENTARY INFORMATION: The Manufactured Housing Consensus Committee (MHCC) was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426 (the Act), for the purpose of providing periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards and the procedural and enforcement regulations. 42 U.S.C. 5403(a)(3)(A). The MHCC may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of the regulations. 42 U.S.C. 5403(b)(1). To be promulgated by the Department, the regulations and revisions recommended by the MHCC must be consistent with the Act.

When the Secretary receives a proposed procedural or enforcement regulation from the MHCC, the Secretary must either approve the proposal with no modification or reject the proposal. If the Secretary rejects the proposal, HUD must provide to the MHCC a written explanation of the reasons for rejection and publish the proposal, the reasons for rejection, and recommended modifications in the **Federal Register**. 42 U.S.C. 5403(b)(4).

The MHCC has transmitted to the Secretary a recommendation dated June 3, 2005 (Recommendation), that the Manufactured Housing Home Procedural and Enforcement Regulations, 24 CFR part 3282, be amended by revising Subpart I, Consumer Complaint Handling and Remedial Actions (24 CFR 3282.401–3282.416) (Subpart I). The Recommendation is the product of extensive work of the MHCC over a period of several months, through 20 lengthy meetings that have involved producers and a retailer of manufactured housing, consumers, administrators of State manufactured housing programs, other interested parties, and HUD. During those discussions, HUD advised the MHCC members, orally and in writing, of concerns that HUD would have with certain language under consideration by the MHCC and the reasons for those concerns. The MHCC addressed some, but not all, of those concerns in its final Recommendation.

Subsequent to the submission of the Recommendation, there have been 7 additional meetings of the MHCC and HUD to discuss the MHCC Recommendation and revisions that HUD had suggested. Agreement was reached on some further changes suggested by HUD or members of the MHCC during those meetings, and those changes will be included in the proposed rule that HUD expects to publish later. In the end the MHCC declined, however, to revise its Recommendation in a manner that would allow HUD to accept it, unchanged, for publication as a proposed rule.

While HUD agrees with a great majority of the MHCC Recommendation, HUD continues to believe that some of the language in the Recommendation is not consistent with the Act and that a few modifications of the language are needed. Therefore, because HUD cannot accept the entire Recommendation, HUD must reject the entire Recommendation. HUD is following the procedure established in section 604(b)(4) of the Act (42 U.S.C. 5403(b)(4)), under which, upon rejection, the Secretary must publish notice of the Recommendation in the **Federal Register**, along with modifications that HUD would suggest.

The Secretary appreciates the dedication and care that the MHCC members have shown in their consideration of the changes suggested for subpart I, and expects to move forward under the separate procedure to publish a proposed rule for public comment that embraces a great majority of the revised subpart I language included in the Recommendation. The proposed rule that HUD has presented

to the MHCC for its consideration under the procedures in section 604(b)(3) of the Act (42 U.S.C. 4503(b)(3)) uses the MHCC Recommendation as its base, but also includes the modifications that are discussed in this notice.

Areas To Be Modified

HUD is setting out in this section of the notice its reasons for the rejection of the Recommendation and the modifications that HUD has suggested to the MHCC.

Reasons for Rejection: Requirements Not Consistent With Statutory Authority

(§§ 3282.404(b)(3), 3282.405(a)(2), 3282.415(c), and 3282.415(d) in Recommendation). In section 615 of the Act (42 U.S.C. 5414), Congress placed responsibility for the notification and correction of defects in manufactured homes on manufacturers, and set guidelines for manufacturers to meet these responsibilities. Section 613 of the Act (42 U.S.C. 5412) imposes additional repair and repurchase requirements on manufacturers. The MHCC has recommended some revisions of the Subpart I requirements that are not consistent with the responsibilities established by Congress when it granted preemption for the Federal standards that apply to the construction of manufactured homes.

The MHCC has recommended limiting the responsibility for furnishing notification to homeowners about safety hazards and failures to comply with the Federal standards, which Congress expressly placed on manufacturers under section 615(a) of the Act (42 U.S.C. 5414(a)). Under the MHCC Recommendation, in some of these instances consumers would not receive notification of problems in their home. HUD would modify the language in §§ 3282.404(b)(3) and 3282.405(a)(2) of the Recommendation to eliminate phrases that limit a manufacturer's notification responsibilities to only those problems that are caused by persons working on behalf of a manufacturer. Consistent with the Act HUD would continue, however, to limit the manufacturer's correction responsibilities to only those defects that are related to errors in design or assembly of the home by the manufacturer, in accordance with section 615(g) (42 U.S.C. 5414(g)).

HUD has a similar concern about language limiting the manufacturer's responsibility under section 613 of the Act (42 U.S.C. 5412) for correcting noncompliances, defects, serious defects, and imminent safety hazards in homes delivered to retailers and distributors before those homes are sold to purchasers, and about language establishing new responsibilities for retailers and distributors that are not found in the Act. HUD would modify § 3282.415(c) of the MHCC Recommendation by eliminating phrases that would limit the manufacturers' pre-sale correction responsibilities and could require HUD and State regulators to meet new burdens of proof in assuring production of manufactured homes that comply with the Federal construction and safety standards. HUD also would delete § 3282.415(d) as being inconsistent with sections 613 and 623(c)(12) of the Act (42 U.S.C. 5412 and 5422 (c)(12)).

Other suggested modifications: determination factors (§ 3282.404(c)(2)(iii)). In the proposed rule that HUD has submitted to the MHCC for prepublication review, HUD also included a few other modifications to the Recommendation, even though HUD does not base its rejection of the MHCC Recommendation on these modifications.

HUD believes that it is important for manufacturers to use appropriate methods for determining which manufactured homes should be included in a class of homes for which notification or correction of defects or safety hazards is required. Currently, § 3282.409(c) of HUD's regulations recognizes a methodology that includes inspection of the actual homes, not the records of those homes. The MHCC Recommendation would revise the current provision by permitting inspection of the records, including consumer and retailer complaints, rather than the homes. HUD would modify that permissive language to make it clear that the methodology would only be acceptable if the cause of the problem is such that it would be understood and reported by consumers or retailers. For example, inadequate firestopping in a home is not a condition that a homeowner, or even a retailer, can be expected to observe and report. Therefore, a manufacturer who is determining the scope of a class of homes with inadequate firestopping should not be permitted to rely on complaint records alone to identify the homes to be included in the class.

Other suggested modifications: recordkeeping. HUD would also add language in the recordkeeping requirements in § 3282.417 that would provide options for how to comply with the requirements and would avoid using an undefined term. These modifications would establish a brighter line for how manufacturer records are to be maintained. The new provisions would also recognize a manufacturer's right to keep some of these records in a central class determination file that might be preferred by some manufacturers and would reduce the amount of paperwork required. HUD would add such an alternative because some manufacturers are already keeping their records in this alternative format, which is a format that also could be more user-friendly for HUD and State regulators in enforcing the law.

Other suggested modifications: generally. HUD would reorganize §§ 3282.411 and 3282.412 of the MHCC Recommendation, to assure these provisions are internally consistent. The general structure of the MHCC Recommendation would be retained, however. Section 3282.411 of the Recommendation establishes the prerequisites for any SAA to refer information to the appropriate SAA or HUD for possible investigation. Section 3282.412 sets forth requirements for HUD or an appropriate SAA to initiate a formal administrative investigation process. The revisions HUD would make in these sections of the Recommendation would be technical changes to simplify and clarify the provisions and to avoid overlap within the two sections.

HUD also would add a requirement in § 3282.404(a) that, when a manufacturer makes an initial determination of a serious defect or imminent safety hazard, the manufacturer must notify HUD, the appropriate SAA, and the manufacturer's IPIA of the determination. The purpose of this requirement would be to provide advance notice of a potentially serious problem during the time the manufacturer is required to develop a full plan of notification and correction regarding the problem. HUD would consider this modification to be appropriate in light of the MHCC's Recommendation that would extend the time a manufacturer has to complete its plan beyond what is permitted under the existing regulations.

Finally, HUD included clarifying and nonsubstantive, editorial changes in the modified version of the Recommendation that HUD submitted to the MHCC for its prepublication review. These changes would be minor and would be for the purpose of making the intent of the applicable provision more clear.

Principles Guiding MHCC Subcommittee

The following principles were adopted by the MHCC subcommittee that was charged with developing a draft revision of subpart I for full committee consideration, and are

included in this notice to provide additional context for the MHCC's efforts on this difficult undertaking:

(1) Subpart I regulations should clearly identify, especially to the homeowner, what problems manufacturers will correct. At a minimum, problems currently being corrected will continue to be corrected.

(2) Subpart I should hold the manufacturer accountable for all construction to comply with the Federal manufactured home construction and safety standards.

(3) If a person is contractually obligated to provide a service or extend a warranty for work that is the manufacturer's responsibility, subpart I regulations would not preclude fulfillment of that obligation or warranty.

(4) Subpart I regulations should clearly define when a manufacturer has a duty to investigate and how the investigation should be performed.

(5) Subpart I should describe methods available to conduct an investigation and indicate the investigation methods may vary based on the circumstances surrounding the problem.

(6) Subpart I regulations should hold the manufacturer accountable for choosing the most appropriate method of investigation based on the known facts concerning the problem.

(7) Subpart I regulations should support the manufacturer's findings and subsequent course of action when a manufacturer has conducted in good faith an appropriate investigation based on the facts available and taken appropriate action. If additional information is presented, then a new investigation may be necessary. SAAs and HUD oversight may be conducted as necessary.

(8) Subpart I regulations should require manufacturers to utilize service records and approved designs as part of the investigative process.

(9) Subpart I regulations should clearly identify who is accountable for problems occurring to sections of homes that are in transit, in storage or at retail sales centers.

(10) Subpart I regulations should not hold the manufacturer responsible for normal wear and aging, unforeseeable consumer abuse or neglect of proper maintenance. The regulations need to indicate how old the manufactured home needs to be before these factors could be considered the primary cause of the problem. The life of the product warranty may be considered for time limits.

(11) The manufacturer's responsibility for construction should be separate and distinct from any manufacturer responsibility for installation.

(12) Subpart I regulations should utilize consistent wording and be in conformance with the Act as amended by the MHIA 2000.

(13) Subpart I regulations should place a priority on correcting the problem while maintaining requirements for sufficient documentation to identify patterns in construction problems.

(14) HUD cannot exceed its statutory authority and must implement all of the requirements of the Act.

(15) For each recommendation, the MHCC will consider the factors in section 604(e) of the Act and any other statutory guidance.

(16) The recommendations for notification and correction should be consistent with the requirements of sections 602 and 615 of the Act.

Text of MHCC Proposal

The text of the rejected proposal submitted by the MHCC is published as Appendix A.

Dated: May 23, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—Text of Rejected MHCC Recommendation to Amend Subpart I of 24 CFR Part 3282

Subpart A: Changes in Definitions:

§ 3282.7 (j): Text with proposed modification:

Defect means, for purposes of this part, a failure to comply with an applicable Federal manufactured home safety and construction standard including any defect in the performance, construction, components or material that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home.

§ 3282.7 (v): Text with proposed modification:

Manufactured Home Construction means all activities relating to the assembly and manufacture of a manufactured home including, but not limited to, those relating to durability, quality, and safety, but does not include those activities regulated under the installation standards in this chapter.

§ 3282.7 (dd) (NEW): Proposed New Text:

Manufactured Home installation standards means reasonable specifications for the installation of a manufactured home, at the place of occupancy, to ensure the proper siting, the joining of all sections of the home, and the installation of stabilization, support or anchoring systems.

Subpart H, § 3282.362(c)(1):

Add the following new 11th sentence, before the sentence ''Failure to perform to the approved manual justifies withholding labels until an adequate level of performance is attained.''

''The IPIA must periodically review the manufacturer's service records for determinations under § 3282.404 to see whether evidence exists that the manufacturer is ignoring or not performing under its approved quality assurance manual, and, if such evidence is found, must advise the manufacturer so that appropriate action may be taken under § 3282.404.''

Subpart I

Table of Contents:

§ 3282.401 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to establish a system of protections provided by the Act with respect to imminent safety hazards and violations of the construction and safety standards with a minimum of formality and delay, while protecting the rights of all parties.

(b) *Scope.* This subpart sets out the procedures to be followed by manufacturers, retailers, State Administrative Agencies, primary inspection agencies, and the Secretary to assure that notification and correction are provided with respect to manufactured homes when required under this subpart. Notification and correction may be required with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party.

§ 3282.402 General provisions.

(a) *Purchaser's rights.* Nothing in this subpart shall limit the rights of the purchaser under any contract or applicable law.

(b) *Manufacturer's liability limited.* A manufacturer is not responsible for failures that occur in any manufactured home or component as the result of normal wear and

aging, unforeseeable consumer abuse, or unreasonable neglect of maintenance. The life of a component warranty may be one of the indicators used to establish normal wear and aging. A failure of any component may not be attributed by the manufacturer to normal wear and aging under this subpart during the term of any applicable warranty provided by the original manufacturer of the affected component.

§ 3282.403 Consumer complaint and information referral.

(a) *Retailer responsibilities.* When a retailer receives a consumer complaint or other information about a home in its possession, or that it has sold or leased, that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard, the retailer must forward the complaint or information to the manufacturer of the manufactured home in question as early as possible in accordance with § 3282.256.

(b) *SAA and HUD responsibilities.* (1) When an SAA or the Secretary receives a consumer complaint or other information that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard in a manufactured home, the SAA or HUD must:

(i) Forward the complaint or information to the manufacturer of the home in question as early as possible; and

(ii) Send a copy of the complaint or other information to the SAA of the State where the manufactured home was manufactured or to the Secretary if there is no such SAA.

(2) When it appears from the complaint or other information that an imminent safety hazard or serious defect may be involved, the SAA of the State where the home was manufactured must also send a copy of the complaint or other information to the Secretary.

(c) *Manufacturer responsibilities.* Whenever the manufacturer receives information from any source that the manufacturer believes in good faith relates to a noncompliance, defect, serious defect, or imminent safety hazard in any of its manufactured homes, the manufacturer must, for each such occurrence, make the determinations required by § 3282.404.

§ 3282.404 Manufacturers' determinations and related concurrences.

(a) *Initial determination.* (1) Not later than 30 days after a manufacturer receives information that it believes in good faith likely indicates a noncompliance, defect, serious defect, or imminent safety hazard, the manufacturer must make a specific initial determination that there is a noncompliance, a defect, a serious defect, an imminent safety hazard, or that the information requires no further action under subpart I. When no further action under subpart I is required and a problem still exists, the manufacturer must forward the information in its possession to the appropriate retailer and, if known, the installer, for their consideration.

(2) In making the determination of noncompliance, defect, serious defect, imminent safety hazard, or that no further action is required under subpart I, the manufacturer must review the information it received and carry out reasonable investigations, including, if appropriate, inspections. The manufacturer must review the information, the known facts, and the circumstances relating to the complaint or information, including service records, approved designs, and audit findings, as applicable, to decide what investigations are reasonable.

(b) *Class determination.* (1) When the manufacturer makes an initial determination of defect, serious defect, or imminent safety hazard, the manufacturer must also make a good faith determination of the class that includes each manufactured home in which the same defect, serious defect, or imminent safety hazard exists or likely exists. Multiple occurrences of defects may be considered the same defect if they have the same cause, are related to a specific workstation description, or are related to the same failure to follow the manufacturer's approved quality assurance manual. Good faith may be used as a defense to the imposition of a penalty, but does not relieve the manufacturer of its responsibilities for notification or correction under this subpart I. The manufacturer must make this class determination not later than 20 days after making a determination of defect, serious defect, or imminent safety hazard.

(2) Paragraph (c) of this section sets out methods for a manufacturer to use in determining the class of manufactured homes. If the manufacturer can identify the precise manufactured homes affected by the defect, serious defect, or imminent safety hazard, the class of manufactured homes may include only those manufactured homes actually affected by the same defect, serious defect, or imminent safety hazard. The manufacturer is also permitted to exclude from the class those manufactured homes for which the manufacturer has information that indicates the homes were not affected by the same cause. If it is not possible to identify the precise manufactured homes affected, the class must include every manufactured home in the group of homes that is identifiable because the same defect, serious defect, or imminent safety hazard exists or likely exists in some homes in that group of manufactured homes.

(3) For purposes related to this section, a defect, a serious defect, or an imminent safety hazard likely exists in a manufactured home if the cause of the defect, serious defect, or imminent safety hazard is such that the same defect, serious defect, or imminent safety hazard would likely have been introduced systematically into more than one manufactured home by the manufacturer, including a person performing work or providing a component on behalf of the manufacturer. Indications that the defect, serious defect, or imminent safety hazard would likely have been introduced systematically may include, but are not limited to, complaints that can be traced to the same faulty design, problems known to exist in supplies of components or parts, information related to the performance of a particular employee or use of a particular process, and information signaling a failure to follow quality control procedures with respect to a particular aspect of the manufactured home.

(4) If under this paragraph (b) the manufacturer must determine the class of homes, the manufacturer must obtain from the IPIA, and the IPIA must provide, either:

(i) The IPIA's written concurrence on the methods used by the manufacturer to identify the homes that should be included in the class of homes; or

(ii) The IPIA's written statement explaining why it believes the manufacturer's methods for determining the class of homes were inappropriate or inadequate.

(c) *Methods for determining class.* (1) In making a class determination under paragraph (b) of this section, a manufacturer is responsible for carrying out reasonable investigations. In carrying out reasonable investigations, the manufacturer must review the information, the known facts, and the relevant circumstances, and generally must establish the cause of the defect, serious defect, or imminent safety hazard. Based on the results of such investigations and all information received, the manufacturer must use an appropriate method or appropriate methods to determine the class of manufactured homes in which the same defect, serious defect, or imminent safety hazard exists or likely exists.

(2) Methods that may be used in determining the class of manufactured homes include, but are not limited to:

(i) Inspection of the manufactured home in question, including its design, to determine whether the defect, serious defect, or imminent safety hazard resulted from the design itself;

(ii) Physical inspection of manufactured homes of the same design or construction, as appropriate, that were produced before and after a home in question;

(iii) Inspection of the service records of a home in question and of homes of the same design or construction, as appropriate, produced before and after that home;

(iv) Inspection of manufacturer quality control records to determine whether quality control procedures were followed and, if not, the time period during which they were not;

(v) Inspection of IPIA records to determine whether the defect, serious defect, or imminent safety hazard was either detected or specifically found not to exist in some manufactured homes;

(vi) Identification of the cause as relating to a particular employee whose work, or to a process whose use, would have been common to the production of the manufacturer's homes for a period of time; and

(vii) Inspection of records relating to components supplied by other parties and known to contain or suspected of containing a defect, a serious defect, or an imminent safety hazard.

(3) When the Secretary or an SAA decides the method chosen by the manufacturer to conduct an investigation in order to make a class determination is not the most appropriate method, the Secretary or SAA must explain in writing to the manufacturer why the chosen method is not the most appropriate.

(d) *Documentation required.* The manufacturer must comply with the recordkeeping requirements in § 3282.417 as

applicable to its determinations and any IPIA concurrence or statement that it does not concur.

§ 3282.405 Notification pursuant to manufacturer's determination.

(a) *General requirement.* Every manufacturer of manufactured homes must provide notification as set out in this section with respect to any manufactured home produced by the manufacturer in which the manufacturer determines, in good faith, that there exists or likely exists:

(1) A serious defect or an imminent safety hazard; or

(2) The same defect caused by a manufacturer, including a person performing work or providing a component on behalf of the manufacturer, that has been introduced systematically into more than one home.

(b) *Requirements by category.* (1) *Noncompliance.* A manufacturer must provide notification of a noncompliance only when ordered to do so by the Secretary or an SAA pursuant to §§ 3282.412 and 3282.413.

(2) *Defects.* When a manufacturer has made a determination in accordance with § 3282.404 that a defect exists or likely exists in more than one home, the manufacturer must prepare a plan for notification in accordance with § 3282.408, and must provide notification with respect to each manufactured home in the class of manufactured homes.

(3) *Serious defects and imminent safety hazards.* When a manufacturer has made a determination in accordance with § 3282.404 that a serious defect or imminent safety hazard exists or likely exists, the manufacturer must prepare a plan for notification in accordance with § 3282.408, must provide notification with respect to all manufactured homes in which the serious defect or imminent safety hazard exists or likely exists, and must correct the home or homes in accordance with § 3282.406.

(c) *Plan for notification required.* (1) If a manufacturer determines that it is responsible for providing notification under this section, the manufacturer must prepare and receive approval on a plan for notification as set out in § 3282.408, unless the manufacturer meets alternative requirements established in § 3282.407.

(2) If the Secretary or SAA orders a manufacturer to provide notification in accordance with the procedures in §§ 3282.412 and 3282.413, the Secretary or SAA has the option of requiring a manufacturer to prepare and receive approval on a plan for notification.

(d) *Method of notification.* When a manufacturer provides notification as required under this section, notification must be:

(1) By certified mail or other more expeditious means to each retailer or distributor to whom any manufactured home in the class of homes containing the defect, serious defect, or imminent safety hazard was delivered;

(2) By certified or express mail to the first purchaser of each manufactured home in the class of manufactured homes containing the defect, serious defect, or imminent safety hazard, and, to the extent feasible, to any subsequent owner to whom any warranty provided by the manufacturer or required by Federal, State, or local law on such manufactured home has been transferred, except that notification need not be sent to any person known by the manufacturer not to own the manufactured home in question if the manufacturer has a record of a subsequent owner of the manufactured home; and

(3) By certified or express mail to each other person who is a registered owner of a manufactured home in the class of homes containing the defect, serious defect, or imminent safety hazard and whose name has been ascertained pursuant to § 3282.211 or is known to the manufacturer.

§ 3282.406 Required manufacturer correction.

(a) *Correction of noncompliances and defects.* (1) Section 3282.415 sets out requirements with respect to a manufacturer's correction of any noncompliance or defect that exists in each manufactured home that has been sold or otherwise released to a retailer but that has not yet been sold to a purchaser.

(2) In accordance with section 623 of the Act and the regulations in part 3288 of this chapter, the manufacturer, retailer, or installer of a manufactured home must correct, at its expense, each failure in the performance, construction, components, or material of the home that renders the home or any part of the home not fit for the ordinary use for which it was intended and that is reported during the 1-year period beginning on the date of installation of the home.

(b) *Correction of serious defects and imminent safety hazards.* (1) A manufacturer required to furnish notification under § 3282.405 or § 3282.413 must correct, at its expense, any serious defect or imminent safety hazard that can be related to an error in design or assembly of the manufactured home by the manufacturer, including an error in design or assembly of any component or system incorporated into the manufactured home by the manufacturer.

(2) If while making corrections under any of the provisions of this subpart, the manufacturer creates an imminent safety hazard or serious defect, the manufacturer shall correct the imminent safety hazard or serious defect.

(3) Each serious defect or imminent safety hazard corrected under this paragraph must be brought into compliance with applicable Standards or, where the Standards are not specific, with the manufacturer's approved design.

(c) *Inclusion in plan.* (1) In the plan required by § 3282.408, the manufacturer must provide for correction of those homes that are required to be corrected pursuant to paragraph (b) of this section.

(2) If the Secretary or SAA orders a manufacturer to provide correction in accordance with the procedures in § 3282.413, the Secretary or SAA has the option of requiring a manufacturer to prepare and receive approval on a plan for correction.

(d) *Corrections by owners.* A manufacturer that is required to make corrections under paragraph (b) of this section or that elects to make corrections in accordance with § 3282.407 must reimburse any owner of an affected manufactured home who chose to make the correction before the manufacturer did so for the reasonable cost of correction.

(e) *Correction of appliances, components, or systems.* (1) If any appliance, component, or system in a manufactured home is covered by a product warranty, the manufacturer, retailer, or installer that is responsible under this section for correcting a noncompliance, a defect, a serious defect, or an imminent safety hazard in the appliance, component, or system may seek the required correction directly from the producer. The SAA that approves any plan of notification required pursuant to § 3282.408 or the Secretary, as applicable, may establish reasonable time limits for the manufacturer of the home and the producer of the appliance, component, or system to agree on who is to make the correction and for completing the correction.

(2) Nothing in this section shall prevent the manufacturer, retailer, or installer from seeking indemnification from the producer of the appliance, component, or system for correction work done on any appliance, component, or system.

§ 3282.407 Voluntary compliance with the notification and correction requirements under the Act.

A manufacturer that takes corrective action that complies with one of the following three alternatives to the requirement in § 3282.408 for preparing a plan will be deemed to have provided any notification required by § 3282.405:

(a) *Voluntary action—one home.* When a manufacturer has made a determination that only one manufactured home is involved, the manufacturer is not required to provide notification pursuant to § 3282.405 or to prepare or submit a plan if:

(1) The manufacturer has made a determination of defect; or

(2) The manufacturer has made a determination of serious defect or imminent safety hazard and corrects the home within the 20-day period. The manufacturer must maintain, in the plant where the manufactured home was manufactured, a complete record of the correction. The record must describe briefly the facts of the case and any known cause of the serious defect or imminent safety hazard and state what corrective actions were taken, and it must be maintained in the service records in a form that will allow the Secretary or an SAA to review all such corrections.

(b) *Voluntary action—multiple homes.* Regardless of whether a plan has been submitted under § 3282.408, the manufacturer may act prior to obtaining approval of the plan. Such action is subject to review and disapproval by the SAA of the State where the home was manufactured or the Secretary, unless the manufacturer obtains the written agreement of the SAA or the Secretary that the corrective action is adequate. If such an agreement is obtained, the correction must be accepted as adequate by all SAA's and the Secretary if the manufacturer makes the correction as agreed to and any imminent safety hazard or serious defect is eliminated.

(c) *Waiver.* (1) A manufacturer may obtain a waiver of the notification requirements in § 3282.405 and the plan requirements in § 3282.408 either from the SAA of the State of manufacture, when all of the manufactured homes that would be covered by the plan were manufactured in that State, or from the Secretary. As of the date of a request for a waiver, the notification and plan requirements are deferred pending timely submission of any additional documentation as the SAA or the Secretary may require and final resolution of the waiver request. If a waiver request is not granted, the plan required by § 3282.408 must be submitted within 5 days after the expiration of the time period established in § 3282.408 if the manufacturer is notified that the request was not granted.

(2) The waiver may be approved if not later than 20 days after making the determination that notification is required, the manufacturer presents evidence that it in good faith believes would show to the satisfaction of the SAA or the Secretary that:

(i) The manufacturer has identified all homes that would be covered by the plan in accordance with § 3282.408;

(ii) The manufacturer will correct, at its expense, all of the identified homes, either within 60 days of being informed that the request for waiver has been granted or within another time limit approved in the waiver; and

(iii) The proposed repairs are adequate to remove the defect, serious defect, or imminent safety hazard that gave rise to the determination that correction is required; and

(3) The manufacturer must correct all affected manufactured homes within 60 days of being informed that the request for waiver has been granted or the time limit approved in the waiver, as applicable. The manufacturer must record the known cause of the problem and the correction in the service records in an approved form that will allow the Secretary or SAA to review the cause and correction.

§ 3282.408 Plan of notification required.

(a) *Manufacturer's plan required.* Except as provided in § 3282.407, if a manufacturer determines that it is responsible for providing notification under § 3282.405, the manufacturer must prepare a plan in accordance with this section and § 3282.409. The manufacturer must, as soon as practical, but not later than 20 days after making the determination of defect, serious defect, or imminent safety hazard, submit the plan for approval to one of the following, as appropriate:

(1) The SAA of the State of manufacture, when all of the manufactured homes covered by the plan were manufactured in that State; or

(2) The Secretary, when the manufactured homes were manufactured in more than one State or there is no SAA in the State of manufacture.

(b) *Implementation of plan.* Upon approval of the plan, including any changes for cause required by the Secretary or SAA after consultation with the manufacturer, the manufacturer must carry out the approved plan within the agreed time limits.

§ 3282.409 Contents of plan.

(a) *Purpose of plan.* This section sets out the requirements that must be met by a manufacturer in preparing any plan it is required to submit under § 3282.408. The underlying requirement is that the plan shows how the manufacturer will fulfill its responsibilities with respect to notification and correction.

(b) *Contents of plan.* The plan must:

(1) Identify, by serial number and other appropriate identifying criteria, all manufactured homes for which notification is to be provided, as determined pursuant to § 3282.404;

(2) Include a copy of the notice that the manufacturer proposes to use to provide the notification required by § 3282.405;

(3) Provide for correction of those manufactured homes that are required to be corrected pursuant to § 3282.406(b);

(4) Include the IPIA's written concurrence or statement on the methods used by the manufacturer to identify the homes that should be included in the class of homes, as required pursuant to § 3282.404(b); and

(5) Include a deadline for completion of all notifications and corrections.

(c) *Contents of notice.* Except as otherwise agreed by the Secretary or the SAA reviewing the plan under § 3282.408, the notice to be approved as part of the plan must include the following:

(1) An opening statement that reads: ''This notice is sent to you in accordance with the requirements of the National Manufactured Housing Construction and Safety Standards Act.'';

(2) The following statement: ''[choose one, as appropriate: Manufacturer's name, or the Secretary, or the (insert State) SAA] has determined that [insert identifying criteria of manufactured home] may not comply with an applicable Federal Manufactured Home Construction or Safety Standard.''

(3) Except when the manufacturer is providing notice pursuant to an approved plan or agreement with the Secretary or an SAA under § 3282.408, each applicable statement as follows:

(i) ''An imminent safety hazard may exist in (identifying criteria of manufactured home).''

(ii) ''A serious defect may exist in (identifying criteria of manufactured home).''

(iii) ''A defect may exist in (identifying criteria of manufactured home).''

(4) A clear description of the defect, serious defect, or imminent safety hazard and an explanation of the risk to the occupants, which must include:

(i) The location of the defect, serious defect, or imminent safety hazard in the manufactured home;

(ii) A description of any hazards, malfunctions, deterioration, or other consequences that may reasonably be expected to result from the defect, serious defect, or imminent safety hazard;

(iii) A statement of the conditions that may cause such consequences to arise; and

(iv) Precautions, if any, that the owner can, should, or must take to reduce the chance that the consequences will arise before the manufactured home is repaired;

(5) A statement of whether there will be any warning that a dangerous occurrence may take place and what that warning would be, and any signs that the owner might see, hear, smell, or feel which might indicate danger or deterioration of the manufactured home as a result of the defect, serious defect, or imminent safety hazard;

(6) A statement that the manufacturer will correct the manufactured home, if the manufacturer will correct the manufactured home under this subpart or otherwise;

(7) A statement in accordance with whichever of the following is appropriate:

(i) Where the manufacturer will correct the manufactured home at no cost to the owner, the statement must indicate how and when the correction will be done, how long the correction will take, and any other information that may be helpful to the owner; or

(ii) When the manufacturer does not bear the cost of repair, the notification must include a detailed description of all parts and materials needed to make the correction, a description of all steps to be followed in making the correction including appropriate illustrations, and an estimate of the cost of the purchaser or owner of the correction;

(8) A statement informing the owner that the owner may submit a complaint to the SAA or Secretary if the owner believes that:

(i) The notification or the remedy described therein is inadequate;

(ii) The manufacturer has failed or is unable to remedy the problem in accordance with its notification; or

(iii) The manufacturer has failed or is unable to remedy within a reasonable time after the owner's first attempt to obtain remedy; and

(9) A statement that any actions taken by the manufacturer under the Act in no way limit the rights of the owner or any other person under any contract or other applicable law and that the owner may have further rights under contract or other applicable law.

§ 3282.410 Implementation of plan.

(a) *Deadline for notifications.* (1) The manufacturer must complete the notifications carried out under a plan approved by an SAA or the Secretary under § 3282.408 on or before the deadline approved by the SAA or Secretary. In approving each deadline, an SAA or the Secretary will allow a reasonable time to complete all notifications, taking into account the number of manufactured homes involved and the difficulty of completing the notifications.

(2) The manufacturer must, at the time of dispatch, furnish to the SAA or the Secretary a true or representative copy of each notice, bulletin, and other written communication sent to retailers, distributors, or owners of manufactured homes regarding any serious defect or imminent safety hazard that may exist in any homes produced by the manufacturer, or regarding any noncompliance or defect for which the SAA or Secretary requires, under § 3282.413(c), the manufacturer to submit a plan for providing notification.

(b) *Deadline for corrections.* A manufacturer that is required to correct a serious defect or imminent safety hazard pursuant to § 3282.406(b) must complete implementation of the plan required by

§ 3282.408 on or before the deadline approved by the SAA or the Secretary. The deadline must be no later than 60 days after approval of the plan. In approving the deadline, the SAA or the Secretary will allow a reasonable amount of time to complete the plan, taking into account the seriousness of the problem, the number of manufactured homes involved, the immediacy of any risk, and the difficulty of completing the action. The seriousness and immediacy of any risk posed by the serious defect or imminent safety hazard will be given greater weight than other considerations.

(c) *Extensions.* An SAA that approved a plan or the Secretary may grant an extension of the deadlines included in a plan if the manufacturer requests such an extension in writing and shows good cause for the extension, and the SAA or the Secretary decides that the extension is justified and is not contrary to the public interest. When the Secretary grants an extension for completion of any corrections, the Secretary will notify the manufacturer and must publish notice of such extension in the Federal Register. When an SAA grants an extension for completion of any corrections, the SAA must notify the Secretary and the manufacturer.

(d) *Recordkeeping.* The manufacturer must provide the report and maintain the records that are required by § 3282.417 for all notification and correction actions.

§ 3282.411 Administrative initiation of remedial action.

(a) *Administrative review of information.* Whenever the Secretary or an SAA has information indicating the possible existence of a noncompliance, defect, serious defect, or imminent safety hazard in a manufactured home, the Secretary or SAA may initiate administrative review of the need for notification and correction in accordance with paragraphs (b) and (c) of this section.

(b) *SAA authority.* (1) An SAA that decides to initiate such administrative review must refer the matter to the SAA in the state of manufacture or, whenever the affected manufactured homes were manufactured in more than one state, to the Secretary for possible action pursuant to § 3282.412.

(2) An SAA in a State of manufacture is permitted to issue a preliminary determination in accordance with § 3282.412 under the following circumstances:

(i) The SAA believes that a manufactured home that has been sold or otherwise released by a manufacturer to a retailer or distributor, but for which there is no completed sale to a purchaser, contains a noncompliance, defect, serious defect, or imminent safety hazard;

(ii) The SAA believes that the information referenced in paragraph (a) of this section indicates a class of homes in which a noncompliance or defect possibly exists;

(iii) The SAA believes that the information referenced in paragraph (a) of this section indicates one or more homes in which a serious defect or an imminent safety hazard possibly exists;

(iv) The SAA is reviewing a plan under § 3282.408 and the SAA and manufacturer disagree on proposed changes to the plan;

(v) The SAA believes that the manufacturer has failed to fulfill the requirements of a waiver granted under § 3282.407; or

(vi) There is evidence that a manufacturer in the State failed to make the determinations required under § 3282.404.

(3) For purposes of this paragraph (b), the conclusion that there is a class of homes in which a noncompliance or defect possibly exists must be based on the same factors that are established for a manufacturer's class determination in § 3282.404(b). If evidence arises that the manufactured homes in the class were manufactured in more than one state, the SAA must refer the matter to the Secretary for any further action.

(4) An SAA that issues a preliminary determination must provide a copy of the preliminary determination to the Secretary at the time of its issuance. Failure to comply with this requirement does not affect the validity of the preliminary determination.

(c) *Secretary authority.* The Secretary may make a preliminary determination in accordance with § 3282.412 when:

(1) There is evidence that a noncompliance, defect, serious defect, or imminent safety hazard possibly exists in any manufactured home; or

(2) There is evidence that the manufacturer failed to make the determinations required under § 3282.404.

(d) *Secretary notification.* The Secretary will notify the SAA of each State where the affected homes were manufactured and, to the extent it is reasonable, the SAA of each State where the homes are located of the issuance of a preliminary determination. Failure to comply with this requirement does not affect the validity of the preliminary determination.

§ 3282.412 Preliminary and final administrative determinations.

(a) *Issuance of preliminary determination.* In accordance with § 3282.411, the Secretary or an SAA may issue a Notice of Preliminary Determination when:

(1) The manufacturer has not provided to the Secretary or SAA the necessary information to make a determination that:

(i) A noncompliance, defect, serious defect, or imminent safety hazard possibly exists; or

(ii) A manufacturer had information that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard for which the manufacturer failed to make the determinations required under § 3282.404; or

(2) The Secretary or SAA has information that likely indicates a noncompliance, a defect, a serious defect, or an imminent safety hazard exists.

(b) *Notice of Preliminary Determination.* (1) The Notice of Preliminary Determination must be sent by certified mail or express delivery and must:

(i) Include the factual basis for the determination;

(ii) Include the criteria used to identify any class of homes in which the noncompliance, defect, serious defect, or imminent safety hazard possibly exists;

(iii) If applicable, indicate that the manufacturer may be required to make corrections on a home or in a class of homes; and

(iv) If the preliminary determination is that the manufacturer failed to make an initial determination required under § 3282.404(a), include an allegation that the manufacturer failed to act in good faith.

(2) The Notice of Preliminary Determination must inform the manufacturer that the preliminary determination will become final unless the manufacturer requests a hearing or presentation of views under subpart D of this part.

(c) *Presentation of views.* (1) The Secretary or the SAA, as applicable, must receive the manufacturer's request for a hearing or presentation of views:

(i) Within 15 days of delivery of the Notice of Preliminary Determination of serious defect, defect, or noncompliance; or

(ii) Within 5 days of delivery of the Notice of Preliminary Determination of imminent safety hazard.

(2) A Formal or an Informal Presentation of Views will be held in accordance with § 3282.152 promptly upon receipt of a manufacturer's request under paragraph (c) of this section.

(d) *Issuance of Final Determination.* (1) The SAA or the Secretary, as appropriate, may make a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists, or that the manufacturer failed to make the determinations required under § 3282.404, if:

(i) The manufacturer fails to respond to the Notice of Preliminary Determination within the time period established in paragraph (c)(2) of this section; or

(ii) The SAA or the Secretary decides that the views and evidence presented by the manufacturer or others are insufficient to rebut the preliminary determination.

(2) At the time that the SAA or Secretary makes a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists, the SAA or Secretary, as appropriate, must issue an order in accordance with § 3282.413.

§ 3282.413 Implementation of Final Determination.

(a) *Issuance of orders.* (1) The SAA or the Secretary, as appropriate, must issue an order directing the manufacturer to furnish notification if:

(i) The SAA makes a Final Determination that a defect or noncompliance exists in a class of homes;

(ii) The Secretary makes a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists; or

(iii) The SAA makes a Final Determination that an imminent safety hazard or serious defect exists in any home and the SAA has received the Secretary's concurrence on the issuance of the Final Determination and order.

(2) The SAA or the Secretary, as appropriate, must issue an order directing the manufacturer to make corrections in any affected manufactured home if:

(i) The SAA or the Secretary makes a Final Determination that a defect or noncompliance exists in a manufactured home that has been sold or otherwise released by a manufacturer to a retailer or

distributor but for which the sale to a purchaser has not been completed;

(ii) The Secretary makes a Final Determination that an imminent safety hazard or serious defect exists; or

(iii) The SAA makes a Final Determination that an imminent safety hazard or serious defect exists in any home and the SAA has received the Secretary's concurrence on the issuance of the Final Determination and order.

(3) Only the Secretary may issue an order directing a manufacturer to repurchase or replace any manufactured home already sold to a purchaser, unless the Secretary authorizes an SAA to issue such an order.

(4) An SAA that has a concurrence or authorization from the Secretary on any order issued under this section must have the Secretary's concurrence on any subsequent changes to the order. An SAA that has issued a Preliminary Determination must have the Secretary's concurrence on any waiver of notification or any settlement when the concerns addressed in the Preliminary Determination involve a serious defect or an imminent safety hazard.

(5) If an SAA or the Secretary makes a Final Determination that the manufacturer failed to make in good faith an initial determination required under § 3282.404(a):

(i) The SAA may impose any penalties or take any action applicable under State law and may refer the matter to the Secretary for appropriate action; and

(ii) The Secretary may take any action permitted by law.

(b) *Decision to order replacement or repurchase.* The SAA or the Secretary will order correction of any manufactured home covered by an order issued in accordance with paragraph (a) of this section unless any requirements and factors applicable under § 3282.414 and § 3282.415 indicate that the SAA or the Secretary should order replacement or repurchase of the home.

(c) *Time for compliance with order.* (1) The SAA or the Secretary may require the manufacturer to submit a plan for providing any notification and any correction, replacement, or repurchase remedy that results from an order under this section. The manufacturer's plan must include the method and date by which notification and any corrective action will be provided.

(2) The manufacturer must provide any such notification and correction, replacement, or repurchase remedy as early as practicable, but not later than:

(i) Thirty (30) days, in the case of a Final Determination of imminent safety hazard or when the SAA or Secretary has ordered replacement or repurchase of a home pursuant to § 3282.414; or

(ii) Sixty (60) days, in the case of a Final Determination of serious defect, defect, or noncompliance.

(3) Subject to the requirements of paragraph (a)(3) of this section, the SAA that issued the order or the Secretary may grant an extension of the deadline for compliance with an order if:

(i) The manufacturer requests such an extension in writing and shows good cause for the extension; and

(ii) The SAA or the Secretary is satisfied that the extension is justified in the public interest.

(4) When the SAA grants an extension, it must notify the manufacturer and forward to the Secretary a draft of a notice of the extension for the Secretary to publish in the **Federal Register**. When the Secretary grants an extension, the Secretary must notify the manufacturer and publish notice of such extension in the **Federal Register**.

(d) *Appeal of SAA determination.* Within 10 days of a manufacturer receiving notice that an SAA has made a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists or that the manufacturer failed to make the determinations required under § 3282.404, the manufacturer may appeal the Final Determination to the Secretary under § 3282.309.

(e) *Settlement offers.* A manufacturer may propose in writing, at any time, an offer of settlement which shall be submitted to and considered by the Secretary or the SAA that issued the Notice of Preliminary Determination. The Secretary or the SAA has the option of providing the manufacturer making the offer with an opportunity to make an oral presentation in support of such offer. If the manufacturer is notified that an offer of settlement is rejected, the offer is deemed to have been withdrawn and will not constitute a part of the record in the proceeding. Final acceptance by the Secretary or an SAA of any offer of settlement automatically terminates any proceedings related to the matter involved in the settlement.

(f) *Waiver of notification.* (1) At any time after the Secretary or an SAA has issued a Notice of Preliminary Determination, the manufacturer may request the Secretary or SAA to waive any formal notification requirements. When requesting a waiver, the manufacturer must certify that:

(i) The manufacturer has made a class determination in accordance with § 3282.404(b);

(ii) The manufacturer will correct, at the manufacturer's expense, all affected manufactured homes in the class within a time period that is specified by the Secretary or SAA, but is not later than 60 days after the manufacturer is notified of the acceptance of the request for waiver or the issuance of any Final Determination, whichever is later; and

(iii) The proposed repairs are adequate to correct the noncompliance, defect, serious defect, or imminent safety hazard that gave rise to the issuance of the Notice of Preliminary Determination.

(2) If the Secretary or SAA grant a waiver, the manufacturer must reimburse any owner of an affected manufactured home who chose to make the correction before the manufacturer did so for the reasonable cost of correction.

(g) *Recordkeeping.* The manufacturer must provide the report and maintain the records that are required by § 3282.417 for all notification and correction actions.

§ 3282.414 Replacement or repurchase of homes after sale to purchaser.

(a) *Order to replace or repurchase.* Whenever a manufacturer cannot fully correct an imminent safety hazard or a serious defect in a manufactured home for which there is a completed sale to a purchaser within 60 days of the issuance of an order under § 3282.413 or any extension of the 60-day deadline that has been granted by the Secretary in accordance with § 3282.413(c), the Secretary or, if authorized in writing by the Secretary in accordance with § 3282.413(a)(3), the SAA may require that the manufacturer:

(1) Replace the manufactured home with a home that:

(i) Is substantially equal in size, equipment, and quality; and

(ii) Either is new or is in the same condition that the defective manufactured home would have been in at the time of discovery of the imminent safety hazard or serious defect had the imminent safety hazard or serious defect not existed; or

(2) Take possession of the manufactured home, if the Secretary or the SAA so orders, and refund the purchase price in full, except that the amount of the purchase price may be reduced by a reasonable amount for depreciation if the home has been in the possession of the owner for more than 1 year and the amount of depreciation is based on:

(i) Actual use of the home; and

(ii) An appraisal system approved by the Secretary or the SAA that does not take into account damage or deterioration resulting from the imminent safety hazard or serious defect.

(b) *Factors affecting order.* In determining whether to order replacement or refund by the manufacturer, the Secretary or the SAA will consider:

(1) The threat of injury or death to manufactured home occupants;

(2) Any costs and inconvenience to manufactured home owners that will result from the lack of adequate repair within the specified period;

(3) The expense to the manufacturer;

(4) Any obligations imposed on the manufacturer under contract or other applicable law of which the Secretary or the SAA has knowledge; and

(5) Any other relevant factors that may be brought to the attention of the Secretary or the SAA.

(c) *Owner's election of remedy.* When under contract or other applicable law the owner has the right of election between replacement and refund, the manufacturer must inform the owner of such right of election and must inform the Secretary of the election, if any, made by the owner.

(d) *Recordkeeping.* The manufacturer must provide the report that is required by § 3282.417 when a manufactured home has been replaced or repurchased under this section.

§ 3282.415 Correction of homes before sale to purchaser.

(a) *Sale or lease prohibited.* Manufacturers, retailers, and distributors must not sell, lease, or offer for sale or lease any manufactured home that they have reason to know in the

exercise of due care contains a noncompliance, defect, serious defect, or an imminent safety hazard. The sale of a home to a purchaser is complete when all contractual obligations of the manufacturer, retailer, and distributor to the purchaser have been met.

(b) *Retailer/distributor notification to manufacturer.* When a retailer, acting as a reasonable retailer, or a distributor, acting as a reasonable distributor, believes that a manufactured home that has been sold to the retailer or distributor, but for which there is no completed sale to a purchaser, likely contains a noncompliance, defect, serious defect, or an imminent safety hazard, the retailer or distributor must notify the manufacturer of the home in a timely manner.

(c) *Manufacturer's remedial responsibilities.* Upon a Final Determination pursuant to § 3282.412 by the Secretary or an SAA, a determination by a court of appropriate jurisdiction, or a manufacturer's own determination that a manufactured home that has been sold to a retailer but for which there is no completed sale to a purchaser contains a noncompliance, defect, serious defect, or an imminent safety hazard, if caused by the manufacturer or a person working on behalf of the manufacturer, or when the retailer/distributor has not made the corrections for the problems they cause, the manufacturer must do one of the following:

(1) Immediately repurchase such manufactured home from the retailer or distributor at the price paid by the retailer or distributor, plus all transportation charges involved, if any, and a reasonable reimbursement of not less than 1 percent per month of such price paid prorated from the date the manufacturer receives notice by certified mail of the noncompliance, defect, serious defect, or imminent safety hazard; or

(2) At its expense, immediately furnish to the retailer or distributor all required parts or equipment for installation in the home by the retailer or distributor, and the manufacturer must reimburse the retailer or distributor for the reasonable value of the retailer's or distributor's work, plus a reasonable reimbursement of not less than 1 percent per month of the manufacturer's or distributor's selling price prorated from the date the manufacturer receives notice by certified mail to the date the noncompliance, defect, serious defect, or imminent safety hazard is corrected, so long as the retailer or distributor proceeds with reasonable diligence with the required work; or

(3) Carry out all needed corrections to the home.

(d) *Retailer/distributor responsibilities.* Upon a Final Determination pursuant to 3282.412 by the Secretary or an SAA, a determination by a court of appropriate jurisdiction, or an agreement reached under section 623(c)(12) of the Act [Dispute Resolution] that a retailer/distributor is responsible for taking a home out of compliance with the construction standards and that the home contains a noncompliance, defect, serious defect, or an imminent safety hazard, the retailer/distributor must, before it is permitted to sell the home:

(1) At its expense, immediately obtain approved designs or instructions from the manufacturer and all required parts and equipment for correction of the home and reimburse the manufacturer or the person authorized by the manufacturer to make the corrections on the home; or

(2) Carry out all needed corrections to the home when approved by the manufacturer.

(e) *Establishing costs.* The value of reasonable reimbursements as specified in paragraph (c) of this section will be fixed by either:

(1) Mutual agreement of the manufacturer and retailer or distributor; or

(2) A court in an action brought under section 613(b) of the Act (42 U.S.C. 5412(b)).

(f) *Records required.* The manufacturer and the retailer or distributor must maintain records of their actions taken under this section in accordance with § 3282.417.

(g) *Exception for leased homes.* This section does not apply to any manufactured home purchased by a retailer or distributor that has been leased by such retailer or distributor to a tenant for purposes other than resale. Other remedies that may be available to a retailer or distributor under subpart I of this part continue to be applicable.

(h) *Indemnification.* A manufacturer may indemnify itself through agreements or contracts with retailers, distributors, transporters, installers, or others for the costs of repurchase, parts, equipment, and corrective work incurred by the manufacturer pursuant to paragraph (c).

§ 3282.416 Oversight of notification and correction activities.

(a) *IPIA responsibilities.* The IPIA in each manufacturing plant must:

(1) Assure that notifications required under this subpart I are sent to all owners, purchasers, retailers, and distributors of whom the manufacturer has knowledge;

(2) Audit the certificates required by § 3282.417 to assure that the manufacturer has made required corrections;

(3) Whenever a manufacturer is required to determine a class of homes pursuant to § 3282.404(b), provide either:

(i) The IPIA's written concurrence on the methods used by the manufacturer to identify the homes that should be included in the class of homes; or

(ii) The IPIA's written statement explaining why it believes the manufacturer's methods for determining the class of homes were inappropriate or inadequate; and

(4) Periodically review the manufacturer's service records of determinations under § 3282.404 and take appropriate action in accordance with §§ 3282.362(c) and 3282.364.

(b) *SAA and Secretary's responsibilities.* (1) SAA oversight of manufacturer compliance with this subpart I will be done primarily by periodically checking the records that manufacturers are required to keep under § 3282.417.

(2) The SAA or Secretary to which the report required by § 3282.417(a) is sent is responsible for assuring through oversight that remedial actions have been carried out as described in the report. The SAA of the State in which an affected manufactured home is located may inspect that home to determine whether any correction required under this subpart I is carried out in accordance with the approved plan or, if there is no plan, to the Standards or other approval obtained by the manufacturer.

§ 3282.417 Recordkeeping requirements.

(a) *Manufacturer report on notifications and corrections.* Within 30 days after the deadline for completing any notifications, corrections, replacement, or repurchase required pursuant to this subpart I, the manufacturer must provide a complete report of the action taken to, as appropriate, the Secretary or the SAA that approved the plan under § 3282.408, granted a waiver, or issued the order under § 3282.413. If any other SAA or the Secretary forwarded the relevant consumer complaint or other information to the manufacturer in accordance with § 3282.403, the manufacturer must send a copy of the report to that SAA or the Secretary, as applicable.

(b) *Records of manufacturer's determinations.* (1) A manufacturer must record each initial and class determination required under § 3282.404 in its service records, in a manner approved by the Secretary or an SAA and that identifies who made each determination, what each determination was, and all bases for each determination. Such information must be available for review by the IPIA.

(2) The manufacturer records must include:

(i) The information it received that likely indicated a noncompliance, defect, serious defect, or imminent safety hazard;

(ii) All of the manufacturer's determinations and each basis for those determinations;

(iii) The methods used by the manufacturer to establish any class, including, when applicable, the cause of the defect, serious defect, or imminent safety hazard; and

(iv) Any IPIA concurrence or statement that it does not concur with the manufacturer's class determination, in accordance with § 3282.404(b).

(c) *Manufacturer records of notifications.* When a manufacturer is required to provide notification under this subpart, the manufacturer must maintain in its files a copy of each type of notice sent and a complete list of the persons notified and their addresses. The manufacturer must maintain these records in a manner approved by the Secretary or an SAA to identify each notification campaign.

(d) *Manufacturer records of corrections.* When a manufacturer is required to provide or provides correction under this subpart, the manufacturer must maintain in its files one of the following, as appropriate, for each manufactured home involved:

(1) If the correction is made, a certification by the manufacturer that the repair was made to conform to the Federal construction and safety standards in effect at the time the home was manufactured and that each identified imminent safety hazard or serious defect has been corrected; or

(2) If the owner refuses to allow the manufacturer to repair the home, a certification by the manufacturer that:

(i) The owner has been informed of the problem that may exist in the home;

(ii) The owner has been provided with a description of any hazards, malfunctions, deterioration, or other consequences that may reasonably be expected to result from the defect, serious defect, or imminent safety hazard; and

(iii) An attempt has been made to repair the problems, but the owner has refused the repair.

(e) *Retailer and distributor records of corrections.* When a retailer or distributor makes corrections necessary to bring a manufactured home into compliance with the Standards, the retailer or distributor must maintain a complete record of its actions.

(f) *Length of retention.* Records of the information and any other records required to be maintained by this subpart must be kept for a minimum of 5 years from the date the manufacturer, retailer, or distributor, as applicable:

(1) Received the information;

(2) Creates the record; or

(3) Completes the notification or correction campaign.

§ 3282.418 Factors for appropriateness and amount of civil penalties.

In determining whether to seek a civil penalty for a violation of the requirements of this subpart I, and the amount of such penalty to be recommended, the Secretary will consider the provisions of the Act and the following factors:

(a) The gravity of the violation;

(b) The degree of the violator's culpability, including whether the violator had acted in good faith in trying to comply with the requirements;

(c) The injury to the public;

(d) Any injury to owners or occupants of manufactured homes;

(e) The ability to pay the penalty;

(f) Any benefits received by the violator;

(g) The extent of potential benefits to other persons;

(h) Any history of prior violations;

(i) Deterrence of future violations; and

(j) Such other factors as justice may require.

[End of MHCC recommended text.]

[FR Doc. 06–5390 Filed 6–9–06; 1:27 pm]

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Part V

Department of Housing and Urban Development

24 CFR Part 3286
Manufactured Home Installation Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3286

[Docket No. FR–4812–P–02; HUD–2006–0167]

RIN 2502–AH97

Manufactured Home Installation Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a federal manufactured home installation program. HUD is required to establish such a program in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000. States that have their own installation programs that include the elements required by statute are permitted to administer under their state installation programs, the new requirements that would be established through this proposed and final rulemaking. The new elements required by statute to be integrated into an acceptable manufactured home installation program are: Establishment of qualified installation standards; licensing and training of installers; and inspection of the installation of manufactured homes.

DATES: *Comment Due Date:* August 14, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available, without change, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000; telephone (202) 708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. The Act was amended on December 27, 2000 (Manufactured Housing Improvement Act of 2000, Title VI, Pub. L. 106–659, 114 Stat. 2997) to require HUD to, among other things, establish and implement a new manufactured home installation program for states that choose not to operate their own installation programs. Specifically, section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes installation standards, the training and licensing of manufactured home installers, and inspection of the installation of manufactured homes.

A state that wants to operate its own installation program is not required to be a State Administrative Agency (SAA) under HUD's manufactured home program (see 24 CFR part 3282). Under the Act, however, any state that submits a new state plan to become an SAA after December 26, 2005, must include a complying installation program as part of its plan. As a result, after December 26, 2005, any state that becomes an SAA for the first time, or any state that becomes an SAA again after a lapse in its SAA status, will be required to administer its own compliant installation program.

The installation standards that will provide a basis for qualifying an installation program under section 605 of the Act were the subject of a separate proposed rule, which was published on April 26, 2005 (70 FR 21498). In addition, an Advance Notice of Proposed Rulemaking that solicited public input on the installation program requirements was published on March 10, 2003 (68 FR 11448). Twenty-six commenters responded to the March 2003 notice, including a dozen state agencies, five state and national industry groups, a manufacturer, four state and national consumer groups, and four individuals. The comments and suggestions received from all of these commenters, as well as from the Manufactured Housing Consensus Committee (MHCC), were taken into consideration in the development of this proposed rule. However, not all of the comments could be accommodated, because of statutory authority or cost considerations. For example, the MHCC and commenters have recommended that HUD develop a program database to record and verify installations and to record how installers and other parties meet the installation program requirements. Such a database would be available for recording training, including continuing education; licensing; and installation inspections and verifications. Due to cost considerations, the proposed rule provides for the possibility of such a tracking system, but also provides for less expensive alternative methods. Further, the Department is seeking comment regarding what information should be sent to the Department and what should be retained by retailers and installers.

A number of the comments focused on the administration of state installation programs rather than HUD's development and administration of a federal installation program. These comments were helpful, and HUD is examining the degree to which HUD has authority to use additional suggested approaches to implement its installation program. For example, both the MHCC and a number of commenters suggested that parties that participate in and receive the benefits of the installation program pay at least a portion of the direct costs associated with the program. This is an approach used by many states that currently have installation programs. Such user charges would generally not be intended to cover the purely administrative costs to HUD of implementing the program, but might include fees to obtain an installer's license or to be qualified as a trainer. Other administrative costs of the program in HUD-administered states would be funded as general program expenses. HUD is currently reviewing this approach and will not introduce any user fees until HUD's authority on

such an approach is clear. Nevertheless, HUD is requesting comments on the advisability of incorporating such fees into the installation program for HUD-administered states.

II. General Principles

HUD identified several general principles to guide it in developing this proposed rule. As a starting point, HUD wanted to encourage states to establish and implement their own installation programs. For the federal program, HUD determined that it wanted to concentrate its limited resources on assuring a quality end product, rather than on micromanagement of the installation process, such as negotiating specific methods used by each installer, retailer, and manufacturer.

So that installers would not be dependent on the actions of HUD in order to complete any phase of home installation, HUD wanted to minimize its role in the actual installation process. Instead, HUD has sought to maintain knowledge of the parties involved in the installation process by assuring the collection of certain information regarding the parties' work. Ultimately, the goal for HUD's continued administration of its installation program would be to identify trends or early indicators of potential problems and then address those areas on a systemic basis.

HUD has based its program design on limiting HUD's day-to-day oversight and encouraging participation in the oversight process by local building code authorities. Such a program design would be the most economical and effective approach. In addition, this design would take advantage of the expertise of qualified state and local authorities that are already providing oversight for the installation of manufactured homes.

The HUD-administered installation program outlined in this proposed rule would be based on qualified installer self-certification of the proper installation of the manufactured home, similar to the certification concept used for manufacturers to assert compliance of the home with construction and safety standards. The installation certification would include certification that the work had passed the required inspection, which would include at least certain elements specified in the rule. At the same time, by requiring the retailer to be responsible for certain recordkeeping functions, the rule would recognize that the retailer is an important component of the installation process.

The rule also would establish disclosure requirements to help the purchaser or lessee understand the installation requirements, and would set out installation-related responsibilities for home manufacturers.

Finally, the rule would establish special procedures for adding to or revising the regulations that would be included in this new part 3286. These procedures would involve the MHCC, a consensus committee established in section 604(a)(3) of the Act (42 U.S.C. 5403), in the issuance of regulations for the installation program and would be in addition to the rulemaking procedures that would otherwise apply.

III. Manufactured Home Installation Program Overview

The statutory concept of the manufactured home installation program, whether HUD-administered or state-administered, is to apply minimum standards to the installation of new manufactured homes, so that qualified persons will install the homes properly. Manufactured homes that are properly installed can provide safe and durable quality housing that can also be highly affordable, since proper installation can mean fewer repairs and longer home-lives.

The proposed rule sets out, in discrete subparts: (1) Manufactured home installation requirements that are applicable in all states (subparts A and H) and to all manufacturers; (2) requirements that are applicable in only those states in which HUD is administering the installation program (subparts B–G); and (3) requirements for states that wish to apply to administer their own installation programs in lieu of the HUD program (subpart I). Further, to make the applicable requirements more readily identifiable, the proposed rule separately organizes the requirements that apply to the retailers, distributors, installers, installation trainers, and installation inspectors in states where HUD administers the installation program. If a term is defined in both this proposed rule and other parts of HUD's manufactured housing program regulations, the final rule may include conforming amendments to assure consistency of the definitions, as appropriate.

Manufacturer Responsibilities (All States). All manufacturers would be required to provide, with each home, an installation design and instructions that have been deemed by a Design Approval Primary Inspection Agency (DAPIA) as providing at least the level of protection that would be provided under the installation standards that will be adopted by HUD in 24 CFR part 3285 (see 70 FR 21498, April 26, 2005). If a home is installed in accordance with instructions provided by the manufacturer and those instructions do not provide at least the required level of protection, the manufacturer will be responsible for the failure of the home to comply with the installation standards.

The manufacturer's installation instructions also must include instructions for supporting the manufactured home temporarily before the home is first sited for occupancy. In order to prevent the home from being brought out of compliance with the construction and safety standards, the instructions must be adequate to assure support for each transportable section of a manufactured home that is temporarily or permanently located on a site used by the manufacturer, by the retailer or at the home site.

For each home a manufacturer ships, the manufacturer must concurrently provide HUD with certain information that identifies the home and the destination of the shipment. This information is similar to what is required already from manufacturers under regulations set out in 24 CFR 3282.552 relating to the construction of homes. HUD anticipates that the manufacturer's reporting requirements for identifying the home and the destination of the shipment will be satisfied by a consolidated report. Manufacturers, with their homes shipped to retailers and distributors, would also be required to include confirmation that this tracking information has been provided to HUD, and the information must be updated by the retailer or distributor. Manufacturers would also be required to include in their consumer manuals a recommendation that if a manufactured home is reinstalled, the new installation work should be inspected.

Retailer/Distributor Responsibilities (All States). The proposed rule defines ''retailer'' to include manufacturers and distributors that sell manufactured homes directly to purchasers. All retailers and distributors would be required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by the retailer or distributor in accordance with the manufacturer's instructions for temporary storage, in order to prevent the home from being brought out of compliance with the construction and safety standards.

The rule would require retailers to provide certain disclosures to purchasers or lessees, either as a separate section of the sales or lease contract or in a separate document. The disclosures are intended to provide important information to consumers

regarding the installation requirements that will apply to their manufactured homes. The proposed rule also reminds parties that the Act prohibits provisions in agreements or contracts that would allow purchasers or lessees to waive any rights afforded to them by the Act.

For each home that is sold or leased, retailers and distributors would be required to maintain a sales or lease record containing specified information for 5 years. For each home that is installed in a state where HUD administers the installation program, retailers and distributors would also be required to update the tracking information that the manufacturers had provided to HUD. This information will enable HUD to determine which homes are to be installed in accordance with the HUD-administered installation program. Additional information provided by the retailers for homes sited in states where HUD administers the installation program will help HUD ascertain whether the installation requirements have been met, and will help HUD identify ways to improve the program.

The proposed rule also assigns other responsibilities to the retailer. Before the manufactured home is sold or leased, the retailer must verify that the home is appropriate for the wind, thermal, and roof loads where the home is to be sited. If the initial home site is not yet known, the retailer must provide additional disclosures to the purchaser or lessee about the design limits of the home and about the risk that an improperly sited home may not pass required inspections. The retailer must also provide the installer with a copy of the approved installation design and instructions.

Installer Responsibilities (HUD-Administered States). The quality of the installation work on a manufactured home will depend primarily on the installer. Because HUD has not previously exercised authority over installers, they are likely to be in need of education about the new requirements that would apply to their work. The amendments to the Act that mandate an installation program recognize the importance of quality installation work to the performance of a purchaser's home. HUD hopes that the network of manufacturers and retailers, who are already familiar with the federal role in manufactured housing, will work to assure an educated and qualified pool of manufactured home installers. To be qualified, an installer will have to demonstrate adequate training, including experience, in order to be recognized by HUD as a licensed installer. The term ''installation license'' or ''installer's license'' is defined in a specific way in the proposed rule, to acknowledge that the term ''license'' is often understood to imply other characteristics than are applicable under the proposed rule.

An installer would be required to obtain training from approved trainers, who would be responsible for teaching a curriculum that enables installers to pass a HUD-administered or HUD-approved test. The proposed rule establishes both initial training requirements and continuing education requirements for installers.

In addition, an installer seeking a license from HUD would be required to provide evidence of, and maintain, general liability insurance. The term of the license would be 3 years, but the license could be renewed. If an applicant is denied a license on grounds other than failure to pass the installation license test, or if a licensee receives notice that his or her license might be revoked or suspended, the applicant or licensee could request an opportunity to challenge the adverse action in an administrative proceeding.

Not all persons who perform installation work would be required to be licensed. Only licensed installers, however, would be permitted to certify the installation as being in conformance with the applicable instructions and the requirements of HUD's installation program, and the licensed installer would be responsible for all of the installation work. The proposed rule also lists typical work related to the siting of a manufactured home for which an installation license is not required.

After meeting the licensing requirements, an installer would be qualified to install a manufactured home in a state where HUD administers the installation program. The installer would be responsible for installing the home in accordance with the manufacturer's instructions, which must reflect the requirements established by HUD. As part of the installation work, the installer would be required to verify: (1) The suitability of the site for placement of the home and (2) suitability of the proposed foundation or support and stabilization system. If the installer believes the home cannot be installed properly at the site, the installer must notify the contracting parties, including the retailer, and must decline to install the home until the deficiencies are remedied.

After completion of the installation work, the installer or retailer would be required to arrange on a timely basis for the work to be inspected by an appropriate third-party inspector. The proposed rule does not specify a time for completion of the inspection; rather, the rule merely requires that it be arranged within 5 business days after completion of the installation work. HUD recognizes that inspector availability may be beyond the control of the installer and retailer, but expects that the installer and retailer will have sufficient incentive to complete the inspection without having to establish a deadline for completion.

When the installer has received the verification of compliance from a qualified inspector, the installer may certify the installation work. The installer would then provide the certification to the retailer and a copy of the certification to the purchaser. Finally, the installer is required to maintain certain records relating to the installation for 5 years.

Trainers (HUD-Administered States). The proposed rule establishes experience and curriculum criteria for persons who wish to register as installation trainers under the HUD-administered installation program. HUD proposes allowing a broad range of private persons and entities to provide the required training, which HUD hopes will assure continued ready access to trainers by installer-license candidates throughout the country. Qualified trainers would be required to maintain attendance and other records and to provide certificates of completion of training, and may be authorized to administer the tests required for installers to obtain licenses from HUD. The curriculum that trainers would be required to develop includes an overview of the Act and the regulatory structure of HUD's manufactured home program, as well as general and specific instruction of installation standards and requirements.

The requirements for continuing education to maintain an installer's license beyond the initial 3-year term would be more flexible. Only qualified trainers would be permitted to train on subject areas required by HUD for continuing education, but the balance of the required hours could be met in a variety of ways.

Interested individuals and entities would apply to HUD to be recognized as qualified trainers for a renewable 5-year term. The proposed rule also provides a right for applicants and qualified trainers to request an opportunity to challenge, in an administrative proceeding, any adverse action on their qualification by HUD.

Inspectors (HUD-Administered States). HUD proposes to rely on local building inspectors and professional engineers and architects as

independent, third-party inspectors of all installations of new manufactured homes in states where HUD administers the installation program. Generally, the installer would be responsible for obtaining and paying for the inspection services. The proposed rule sets out the elements that would be included in the inspection checklist, including required permits, specific elements of the minimum installation standards, and operational checks to be completed. The inspector would verify that the installation has been completed in accordance with the requirements of the regulations and would provide evidence of the verification to the installer. The installer must receive this verification before the installer could certify the installation work. The proposed rule also addresses what would happen if an installation cannot be verified as meeting the requirements of the regulations. As with other categories of program participants, inspectors would have a right to request administrative review of an adverse action by HUD on their authority to serve as inspectors in the HUD-administered states.

Enforcement (HUD-Administered States). The proposed rule reiterates that failure to comply with the installation program requirements would be a prohibited act under section 610(a)(7) of the Act (42 U.S.C. 5409(A)). As a result, the violator would be subject to civil and criminal penalties and actions for injunctive relief. In addition, installation defects that are reported in the first year after installation may be addressed in a dispute resolution program that meets the requirements in section 623 of the Act (42 U.S.C. 5422). HUD has published a separate proposed rule to implement the requirements for a qualifying dispute resolution program on October 20, 2005, at 70 FR 61178.

Recordkeeping (All States). As proposed, the rule would require retailers and distributors to maintain a sales or lease record containing specified information for all homes that they sell or lease. In addition, retailers and distributors would be required to report to HUD certain information about each home that is installed in states where HUD administers the installation program, so that HUD can determine which homes are to be installed in accordance with the HUD-administered installation program. This information may be useful if HUD is to structure fees according to the siting of the home. Such a reporting structure might eventually be simplified by establishing Internet-based data entry, rather than using hard-copy reports, and by consolidating installation and construction reporting requirements.

IV. State Installation Programs

Qualifying State Programs. One of HUD's guiding principles in developing the proposed HUD Manufactured Home Installation Program is to encourage the development and continued innovation of state installation programs. The proposed rule would establish that the HUD-administered installation program will operate in a state unless that state certifies, using a form provided in the rule, that it has its own qualifying installation program. A state installation program would be required to meet criteria listed in the self-certification form, but the rule would not specify how the criteria are to be met. In this way, states will have more flexibility to design installation programs or modify existing ones according to their individual preferences and circumstances.

A state's certification would encompass those elements expressly required by the Act to be part of a qualifying program, i.e., standards that provide protection to residents that equals or exceeds the level of protection provided by HUD's model standards; the state's training and licensing of installers; and the state's inspection of installations. An appropriate state official would sign the self-certification, and, at least initially, HUD would perform only a limited review of such certifications. If a state provides for its installation program as part of a state plan, HUD would also consider the installation program when it reviews the state plan. Recertification would be required every 3 years or whenever there is a significant revision in either the state's installation standards or its installation program elements.

Generally, a state that wants to administer its own program will have to assure HUD that all geographical areas of the state would be covered by the applicable installation standards and the other program requirements. An exception would be provided for limited areas of the state that are subject to federal law that prevents the state from having jurisdiction over manufactured home installations in those areas. The certification form would include an item asking the state for information about such situations. The certification form also asks the state to provide other information that will help HUD understand and evaluate its overall approach to implementation of the Act's installation program. Those parts of the certification form that ask for information beyond what is required for the self-certification would be used to assess the utility of future modifications of HUD's installation program.

The proposed rule would permit a state that complies in significant part with the requirements for a state-administered installation program, and that is moving toward full compliance, to be conditionally accepted as a qualifying program for up to 3 years. These states would have to require compliance with the minimum installation standards and would have to provide adequate funding and staffing support to their programs. Similar to the provision for rejection of state plans (see 24 CFR 3282.304), in the proposed rule HUD would provide notice to the state if HUD finds the state's certification inadequate, and HUD would also provide an opportunity to cure the inadequacy. In the event of a failure to cure, HUD would notify the state, by using the procedures in 24 CFR part 3282, subpart D, that the HUD installation program would apply in that state, and that the state has a right to a hearing on the disapproval.

Effect of Other State and Local Requirements. The Act provides specific criteria only for the installation-standards component of a qualifying installation program. In order for a state installation program to satisfy the criteria of the Act, the installation standards imposed by the state must provide at least the specified level of protection to residents of manufactured homes. See section 605(c)(3)(A) of the Act (42 U.S.C. 5404(c)(3)(A)). The Act does not establish such minimum requirements for the other elements that are required to be in a qualifying state program: training and licensing of installers, and inspections.

Further, section 604(d) of the Act (42 U.S.C. 5403(d)) generally reserves to each state the right to establish standards for the stabilizing and support systems and foundation systems of manufactured homes sited in the state. Therefore, state and local requirements that are not inconsistent with the minimum installation standards required by the Act and HUD's regulations might also be applicable to particular installations. For example, a state or local requirement that only licensed persons may perform work to connect the home to utilities would not be affected by this proposed rule.

V. Specific Issues for Comment

In addition to commenting on the specific provisions included in this proposed rule, the public is invited to provide comment on the following questions and any other related matters:

(1) *Limited exemptions from requirements.* The proposed rule provides that, in limited circumstances, a state may qualify to administer its own

installation program even if the minimum installation standards cannot be applied and enforced in all areas of the state. This limited exemption is intended to apply only where the state can demonstrate that it lacks legal authority, as a matter of federal law, to impose the installation requirements, and the proposed rule would require that the minimum installation standards and other requirements do apply in all other areas of the state. Similarly, the proposed rule provides an exception to application of the installation program requirements to temporary housing units provided to victims of Presidentially declared disasters, when the manufactured home is installed by persons holding an emergency contractor license issued by: (1) The state in which the home is sited or (2) by the Federal Emergency Management Agency. Should the final rule recognize any other exemptions?

(2) Should the manufacturer be required to provide notice about the installation program in the home or in the consumer's manual, in addition to the required disclosure on the sales contract?

(3) Should the final rule set out specific language for the installer to use in certifying that the installation of the home complies with the requirements of HUD's installation program? If so, what information should be included in the installer's certification?

(4) Should the final rule include any requirements for training relating to assuring accessibility and visitability for mobility-challenged persons?

(5) Should the final rule include any special method for tracking homes that are released from one retailer to another? If so, what should be the method?

(6) The proposed rule includes a requirement that retailers notify HUD about new manufactured homes that will be installed in a state where HUD administers the installation program. Should the final rule include a requirement that, when a manufactured home is sold, retailers notify either HUD or the state in which the home is to be installed (if that state has a qualifying installation program)?

(7) For purposes of HUD's enforcement of requirements related to installation standards and construction and safety standards, HUD may establish a different completion-of-sale date in HUD-administered states than would be applicable in non-HUD-administered states. How should the completion-of-sale date of a manufactured home be affected by the new requirements for installation oversight in: (1) HUD-administered states? (2) In states with their qualifying installation programs? (See 24 CFR 3282.252(b) in HUD's procedural and enforcement regulations, and § 3286.117 in this proposed rule.)

(8) Section 3286.203(b) of this proposed rule lists kinds of work or activities for which an installation license would not be required. Are there other areas that should be included in any such listing in the final rule?

(9) Should holding an installer's license or certification that is issued in a state with a qualifying installation program be recognized as a basis for exempting a HUD license applicant from having to meet the experience requirements that would otherwise apply?

(10) Should a professional engineer, a registered architect, or a Primary Inspection Agency (PIA) be permitted to conduct an installation inspection only if an inspector from the appropriate local jurisdiction is not available to perform the inspection? Should any other persons be permitted to conduct the installation inspections in HUD-administered states, such as qualified inspectors from other states with HUD-approved installation programs or private third parties experienced in residential building construction?

(11) *Disclosures.* Section 3286.603(b) in the proposed rule requires a retailer disclosure when the initial siting location of the manufactured home is not known at the time of sale. Should the final rule instead require the retailer to know at the time of sale where the home is to be sited? If not, should the final rule include the § 3286.603(b) disclosure in the list of written disclosures required in § 3286.7(b) of the proposed rule? Should the final rule expressly require that any or all of these disclosures be signed by the purchaser, as evidence that the required disclosure was made?

(12) *Use of the word ''should'' instead of ''must.''* Occasionally in the proposed rule, HUD has used the word ''should,'' rather than the mandatory ''must.'' This usage has been deliberate and generally indicates an area that HUD recognizes as being important to the successful installation of a manufactured home, but in which HUD believes its authority is limited. Commenters are invited to point out instances of where the choice of terminology may be inappropriate.

VI. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Paperwork Reduction Act

The proposed information collection requirements contained in this rule have been submitted to the OMB for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The following table provides information on the estimated public reporting burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 3286.5(d)—Manufacturer's temporary installation instructions	78	1	78	20	1,560
§ 3286.7(a)—Manufacturer's notice in the consumer manual	222	608	135,000	0.17	22,500
§ 3286.7(b)—Retailer disclosure before sale (§ 3286.503(b), § 3286.603(a)(2)(i))	5,151	26	135,000	0.17	22,500

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 3286.9(a)—Manufacturer providing information to HUD prior to shipment	222	608	135,000	0.17	22,500
§ 3286.9(c)—Manufacturer providing notice to retailer at time of shipment	222	608	135,000	0.17	22,500
§ 3286.9(d)—Manufacturer's notice in the installation instructions	222	608	135,000	0.17	22,500
§ 3286.13—Retailer providing information to HUD (§ 3286.605(a))	340	20	6,750	0.17	1,125
§ 3286.103(a)—Retailer providing installation instructions to the purchaser	340	20	6,750	0.17	1,125
§ 3286.103(b)—Retailer providing installation instructions to the installer	340	17	5,738	0.17	956
§ 3286.111(a)—Installer conduct installation certification of installation (§ 3286.411(a), § 3286.507(b))	1,021	7	6,750	0.5	3,375
§ 3286.111(b)—Installer providing installation certification to retailer and purchaser (§ 3286.411(a), § 3286.507(b))	1,021	7	6,750	0.17	1,125
§ 3286.113(a)—Retailer providing installation information to HUD (§ 3286.605(a))	340	20	6,750	0.25	1,688
§ 3286.207(a)—Installation license application	1,021	1	1,021	1	1,021
§ 3286.207(b)—Proof of experience for license	1,021	1	1,021	1	1,021
§ 3286.207(c)—Proof of training for license	1,021	1	1,021	0.25	255
§ 3286.207(d)—Proof of insurance for license	1,021	1	1,021	0.25	255
§ 3286.207(e)—List of states in which the applicant holds a license	1,021	1	1,021	0.08	85
§ 3286.211(b)—Installation license renewal	1,021	1	1,021	1	1,021
§ 3286.303(b)—Trainers required to keep attendance records	50	1	50	104	5,200
§ 3286.303(c)—Trainers required to provide completion certificates	50	20	1,021	0.17	170
§ 3286.307(a)—Trainer registration application	50	1	50	1	50
§ 3286.307(b)—Trainer proof of experience required	50	1	50	1	50
§ 3286.307(c)—Other trainer qualification required	50	0.02	1	0.25	0.25
§ 3286.313—Expiration and renewal of trainer qualification	50	1	50	1	50
§ 3286.405(b)—Installer notification of inappropriate site	1,021	0.07	68	0.5	34
§ 3286.413—Installer recordkeeping requirements	1,021	1	1,021	24	24,504
§ 3286.805(a)—State Installation Program Certification Form	35	1	35	2	70
§ 3286.807(a)—State Installation Program Recertification Form	35	1	35	1	35
Totals		2,583	723,073		157,276

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4812–P–02) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, FAX: (202) 395–6974;

and

Kathleen O. McDermott, Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–8000.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment has

been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

HUD is required by statute to establish an installation program through the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426). However, in accordance with the Act and as set forth in § 3286.15 of this proposed rule, this Manufactured Home Installation Program is not preemptive.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to consider the impact of their rules on small entities. When the proposed regulation will impose a significant economic impact on a substantial number of small entities, the agency must evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities.

HUD conducted a preliminary analysis of the cost impact on small entities for this rule. The completed preliminary analysis concluded that the Manufactured Home Installation Program would have a significant economic impact on a substantial number of small entities. Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C 603), HUD performed an Initial Regulatory Flexibility Analysis (IRFA) that evaluates the potential economic impact on the small entities the regulations will affect, including: manufacturers, retailers, installers, and trainers. The IRFA also evaluates the differences in cost depending whether the home is single-section or multi-section. A summary of the IRFA follows. As noted above in the preamble, on December 27, 2000, the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C 5401–5426) (the Act) was amended by the Manufactured Housing Improvement Act of 2000, which, among other things, required the Secretary to establish an Installation Program for the enforcement of the Model Manufactured Home Installation Standards in each state that does not have an installation program established by state law and approved by HUD.

The rule would regulate establishments primarily engaged in making manufactured homes (NAICS 321991), the sale or lease of manufactured homes (NAICS 453930), the installation of manufactured homes (NAICS 238990), the training of installers (NAICS 611519), and states administering their own installation programs. The following table summarizes the number of regulated entities and the number of small entities that the proposed rule would affect:

NAICS code	Description of primary entity	Number of regulated entities	SBA size standard	Number of small entities	Percentage of regulated entities
All states—Subpart A is applicable in all states					
321991	Manufacturers	222	500 emp.	198	89
453930	Retailers	5,151	500 emp.	5,151	100
States without installation programs—Subparts B through H are applicable in these states					
453930	Retailers	340	500 emp.	340	100
238990	Installers	1,021	$12 mil.	1,021	100
611519	Trainers	50	$6 mil.	50	100
States with installation programs—Subpart I is applicable in these states					
	States	35	50,000 pop.	0	0

Of the 222 firms included under the NAICS 321991 definition, 198 are small manufacturers that fall below the small business threshold of 500 employees. Of the remaining firms involved in the manufactured housing industry regulated by this proposed rule included under NAICS 453930, NAICS 238990, and NAICS 611519 definitions, none exceed the small business thresholds established for the category. States are not considered small entities since they exceed the small jurisdiction threshold population of 50,000. Therefore, the rule would affect a substantial number of small entities.

The following table summarizes the cost impacts associated with the proposed rule:

Current manufactured home production—Total	[1] $135,000
Current manufactured home production—HUD-administered states	[1] 6,750
Number of manufacturers—Total	222
Estimated number of retailers—Total	5,151
Estimated number of retailers—HUD-administered states	340
Estimated number of installers—HUD-administered states	1,021
Estimated number of trainers—HUD-administered states	50
Estimated number of HUD-administered states	15

Total increase for a single wide—All states	17
Total increase for a double wide—All states	17
Total increase for a single wide—HUD-administered states	974
Total increase for a double wide—HUD-administered states	1,023
Total compliance cost per manufacturer—All states	6,672
Total compliance cost per retailer—All states	186
Total compliance cost per retailer—HUD-administered states	514
Total compliance cost per installer—HUD-administered states	6,371
Total compliance cost per trainer—HUD-administered states	2,045
Total compliance cost per state—HUD-administered states	120
Total estimated economic impact	[2] 9,006,000

[1] Consisting of about 30 percent single-section homes and 70 percent multi-section homes.

[2] The paperwork component, associated with the reporting and recordkeeping requirements, described above in the Paperwork Reduction Act section of the preamble, accounts for $3.31 million of the total estimated economic impact.

The overall cost impact for a single-section home is determined to be approximately $974 per home, and the cost impact for a multi-section home is determined to be about $1,023 per home in states where HUD administers the installation program. The cost impact for single-section and multi-section homes is determined to be approximately $17 per home in states where HUD does not administer the installation program. Because state-administered installation programs would be funded through state mechanisms, they are not included in this analysis. State-administered installation programs would also have to encompass those elements expressly required by the Act to be part of a qualifying program, *i.e.*, standards that equal or exceed the level of protection provided by HUD's model standards, training and licensing of installers, and inspection of installations.

Current manufactured home production is approximately 135,000 homes with approximately 6,750 homes in states where HUD will administer the installation program. Of the total production, approximately 30 percent consists of single-section homes and 70 percent consists of multi-section homes. The combined cost impact for all homes in all states is approximately $9 million annually.

Based on a current installation cost of about $5,000 for a single-wide home, the $974 increase in states where HUD would administer the installation program would represent an increase of approximately 20 percent from the current cost of installing a single-section home. Similarly, the current cost of installing a multi-section home is about $8,000. Therefore, the cost impact of $1,023 per multi-section home in states where HUD would administer the installation program would represent an increase of about 13 percent from the current cost. These estimated costs and cost impacts represent a significant economic effect on an industry-wide, per-home basis. The increase in total cost associated with this proposed rule would have a significant economic impact on a substantial number of small entities.

The Department is unaware of any federal rules that conflict with the proposed rule. However, the proposed rule requires duplicative information to that required in 24 CFR 3282.552, which requires manufacturers to submit monthly label reports to their Production Inspection Primary Inspection Agency (IPIA). 24 CFR 3282.553 requires each IPIA to provide the information in the monthly label reports to the Department. Proposed § 3286.9 requires the manufacturer to provide similar information to the Department for the purposes of installation.

In this rule, the Department combined the reporting requirements in 24 CFR 3282.552 and 3286.9 by revising form HUD–302 so that the manufacturer must complete only one form. The proposed rule seeks specific comments regarding this issue.

In drafting the proposed rule, HUD considered numerous alternatives to reduce the economic impacts on small entities. Below are the significant alternatives that were considered:

Section 3286.5(d) Alternative Considered—The Department considered eliminating this requirement. However, the importance of assuring that the temporary supports will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the Construction and Safety Standards in 24 CFR part 3280 prior to sale is a necessary consumer protection.

Section 3286.7(a) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection with regard to reinstalled homes justifies the costs associated with this section.

Section 3286.7(b) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection during the purchase or lease of a manufactured home justifies the costs associated with this section.

Section 3286.9(a) Alternative Considered—The Department considered requiring manufacturers to provide the initial tracking information about homes installed in only those states in which HUD administers the installation program. Such a requirement would reduce the reporting burden on the manufacturers; however, in many instances, manufacturers do not know the destination or address of the home at the time of shipment. Therefore, it is not practical to collect information on homes being installed in HUD-administered states only. In addition, this information is very similar to that information required in 24 CFR 3282.552, and the OMB-approved form HUD–302 has been revised to collect the information using a single form.

Section 3286.9(c) Alternative Considered—The Department considered requiring manufacturers to provide notice to the retailers only for those homes installed in states where HUD administers the installation program. Such a requirement would reduce the reporting burden on the manufacturer; however, in many instances, manufacturers do not know the destination or address of the home at the time of shipment. Therefore, it is not practical to provide notices on homes being installed in HUD-administered states only.

Section 3286.9(d) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection with regard to the installation of manufactured homes justifies the small costs associated with this section.

Section 3286.13 Alternative Considered—The Department considered requiring the retailer or distributor to provide HUD with tracking information for all homes at the time that a purchaser or lessor enters into a contract to purchase or lease a

manufactured home. As proposed, the rule would significantly reduce the reporting burden for retailers and distributors by requiring them to provide tracking information about homes that are to be installed only in HUD-administered states, and by requiring them to keep all sales records for 5 years.

Section 3286.103(a) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection with regard to the installation of manufactured homes justifies the costs associated with this section.

Section 3286.111(a) Alternative Considered—The Department considered using contractors to inspect and certify that the installation of the home has been completed correctly. This alternative model would be similar to that of a local building department that monitors the construction of buildings. However, this alternative method would have a substantially larger economic impact on small entities than the proposed requirement. The proposed requirements in § 3286.111(a) models the requirements in 24 CFR 3282.362(c)(2)(i) that requires the home manufacturer to certify that the home has been built in conformance with the Construction and Safety Standards.

Section 3286.113(a) Alternative Considered—The Department considered eliminating this requirement. However, the Department determined that this requirement is necessary to keep necessary records regarding the installation of the home. This section will encourage retailers to use competent installers and keep the retailer part of the installation process. Without this requirement, the retailer would be able to sell homes and take fees for the installation of the homes without being held accountable by the regulations for poor workmanship of the installation.

Section 3286.211 Alternative Considered—Installers are required to renew their licenses every 3 years. This schedule was chosen to reduce the burden of yearly renewals and to ensure that installers will receive timely training on updates to the installation requirements.

Subpart D Alternatives Considered—Subpart D establishes the minimum requirements for a person to provide installation training. The installation training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program.

This Subpart requires qualified trainers to:

—Adequately address the curriculum and instruction time requirements
—Maintain attendance records
—Provide certificates of completion
—Maintain records for 5 years
—Meet minimum experience prerequisites
—Certify that their curriculum meets HUD requirements
—Apply to HUD for qualification

The Department considered requiring trainers to obtain training from the Department prior to qualification; however, this requirement would have an increased cost to the trainer and the federal government. In addition, this requirement may limit the number of eligible trainers since all trainers would have to complete training prior to training installers.

Notwithstanding HUD's determination that this rule would have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives and those of federal statutes. The complete IRFA is available for downloading at *http://www.regulations.gov* and for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing is 14.171.

List of Subjects in 24 CFR Part 3286

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to add a new part 3286 in chapter XX of Title 24 of the Code of Federal Regulations to read as follows:

PART 3286—MANUFACTURED HOME INSTALLATION PROGRAM

Subpart A—Generally Applicable Provisions and Requirements

Sec.

Subpart B—Certification of Installation in HUD-Administered States

Subpart C—Installer Licensing in HUD-Administered States

Subpart D—Training of Installers in HUD-Administered States

Subpart E—Installer Responsibilities of Installation in HUD-Administered States

Subpart F—Inspection of Installations in HUD-Administered States

Subpart G—Retailer Responsibilities in HUD-Administered States

Authority: 42 U.S.C. 3535(d), 5404, and 5424.

Subpart A—Generally Applicable Provisions and Requirements

§ 3286.1 Purpose.

The purpose of this part is to establish the regulations that are applicable to HUD's administration of an installation program that meets the requirements of sections 602 (42 U.S.C. 5401) and 605 (42 U.S.C. 5404) of the National Manufactured Housing Construction and Safety Standards Act of 1974. The purpose of this subpart A is to establish the regulations that are applicable with respect to all manufactured homes before they are sold to a purchaser. The requirements in subpart A apply regardless of whether the actual installation of a manufactured home is regulated by HUD or a state.

§ 3286.2 Applicability.

(a) *All states.* The requirements in subpart A are applicable in all states.

(b) *States without installation programs.* The requirements in subparts B through H of this part are applicable only in those states where HUD is administering an installation program in accordance with this part.

(c) *States with installation programs.* The requirements in subpart I of this part are applicable to only those states that want to administer their own installation programs in lieu of the installation program administered by HUD in accordance with this part.

(d) *Exclusion.* None of the requirements of this part apply to:

(1) Any structure that a manufacturer certifies as being excluded from the coverage of the Act in accordance with § 3282.12 of this chapter;

(2) Temporary housing units provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) to victims of Presidentially declared disasters, when the manufactured home is installed by persons holding an emergency contractor license issued by the state in which the home is sited or by the Federal Emergency Management Agency; or

(3) Any manufactured home after the initial installation of the home following the first purchase of the home in good faith for purposes other than resale.

§ 3286.3 Definitions.

The following definitions apply in this part, except as otherwise noted in the regulations in this part:

Act means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5425.

Certification of installation means the certification, provided by an installer under the HUD-administered installation program in accordance with § 3282.111, that indicates that the manufactured home has been installed in compliance with the appropriate design and instructions and has been inspected as required by this part.

Defect means any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended.

Design means drawings, specifications, sketches and the related engineering calculations, tests, and data in support of the configurations, structures, and systems to be incorporated in manufactured homes manufactured in a plant.

Design Approval Primary Inspection Agency (DAPIA) means a state agency or private organization that has been accepted by the Secretary, in accordance with the requirement of subpart H of part 3282, to evaluate and either approve or disapprove manufactured home designs and quality control procedures.

Distributor means any person engaged in the sale and distribution of manufactured homes for resale.

HUD means the United States Department of Housing and Urban Development.

HUD-administered installation program means the installation program to be administered by HUD, in accordance with this part, in those states that do not have a qualifying installation program.

Installation means work done to stabilize, support, or anchor a manufactured home or to join sections of a multi-section manufactured home, when any such work is governed by the federal installation standards in part 3285 of this chapter or by state installation standards that are certified as part of a qualifying installation program.

Installation instructions means a manufacturer's DAPIA-approved set of specifications to assure that a manufactured home is set up in accordance with the applicable installation standards, as are required under part 3285 of this chapter.

Installation standards means the standards established by HUD in 24 CFR part 3285, or any set of state standards that the Secretary has determined provide protection to the residents of manufactured homes that equals or exceeds the protection provided by the standards in 24 CFR part 3285.

Installer means the person who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home, as governed by part 3285 of this chapter.

Installer's license or *installation license* means the evidence that an installer has met the requirements for installing manufactured homes under the HUD-administered installation program. The term does not incorporate a state-issued installation license or certification, except to the extent provided in this part. The term does not imply that HUD approves or recommends an installer or warrants the work of an installer, and should not be used in any way that indicates HUD approval in violation of 18 U.S.C. 709.

Lessee means any person who leases a manufactured home prior to the first purchase of the home in good faith for purposes other than resale.

Manufactured home means a structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term also includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the installation standards established under part 3285 and the construction and safety standards in part 3280 of this chapter, but such term does not include any self-propelled recreational vehicle.

Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

Manufactured Housing Consensus Committee or *MHCC* means the consensus committee established pursuant to section 604(a)(3) of the Act, 42 U.S.C. 5403(a)(3).

Manufacturer means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

Manufacturer's certification label means the permanent label that is required by § 3280.11 of this chapter to be affixed to each transportable section of each manufactured home.

Person includes, unless the context indicates otherwise, corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals, but does not include any agency of government or tribal government entity.

Professional engineer or registered architect means an individual or entity licensed to practice engineering or architecture in a state and subject to all laws and limitations imposed by the state agency that regulates the applicable profession, and who is engaged in the professional practice of rendering service or creative work requiring education, training, and experience in architecture or engineering sciences and the application of special knowledge of the mathematical, physical, and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.

Purchaser means the first person purchasing a manufactured home in good faith for purposes other than resale.

Qualified trainer means a person who has met the requirements established in subpart D of this part to be recognized as qualified to provide training to installers for purposes of the HUD-administered installation program.

Qualifying installation program means an installation program that a state certifies, in accordance with the requirements set out in subpart I of this part, as meeting the requirements of 42 U.S.C. 5404(c)(3).

Retailer means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale, and, for purposes of this part, the term includes any manufacturer or distributor that sells a manufactured home directly to a purchaser.

Secretary means the Secretary of Housing and Urban Development.

Setup means any assembly or installation of a manufactured home on-site that includes aspects of work that are governed by parts 3280 or 3285 of this chapter.

State includes each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

§ 3286.5 Overview of installation program.

(a) *Tracking homes.* Each manufactured home will be tracked from its initial shipment to at least its sale to a purchaser.

(b) *State installation programs.* States that have qualifying programs, as established through the procedures set out in subpart I of this part, will administer their own programs, except for generally applicable requirements in this subpart A.

(c) *Installer requirements.* Installers in states where HUD administers an installation program under this part will be required to meet licensing, training, and insurance requirements established in subparts C, D, and E of this part. Licensed installers in the HUD-administered program will self-certify their installations of manufactured homes to be in compliance with the federal installation standards in part 3285 of this chapter. In order for such an installer to self-certify compliance with the installation standards, the installer will have to assure that acceptable inspections, as required in subpart F of this part, are performed. Additional tracking information on the shipment and installation of these homes will be provided to HUD by the manufacturers and retailers.

(d) *Manufacturer and retailer requirements.* (1) Manufacturers and retailers are responsible for compliance of the home with the construction and safety standards in part 3280 of this chapter, in accordance with the Act and applicable regulations. Manufacturers and retailers must also comply with applicable requirements in this part relating to the installation of the manufactured home.

(2) In the installation instructions required pursuant to part 3285 of this chapter, the manufacturer must include instructions for supporting the manufactured home temporarily, pending the first siting of the home for occupancy. The instructions must be adequate to assure that the temporary supports used will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the construction and safety standards in part 3280 of this chapter if the home or its sections is stored on such supports for more than 30 days.

(e) *HUD oversight.* The Secretary may take such actions as are authorized by the Act to oversee the system established by the regulations in this part, as the Secretary deems appropriate.

§ 3286.7 Consumer information.

(a) *Manufacturer's consumer manual.* In each consumer manual provided by a manufacturer as required in § 3282.207 of this chapter, the manufacturer must include a recommendation that any home that has been reinstalled after its original installation should be inspected after it is set up in order to assure that it has not been damaged and is properly installed.

(b) *Retailer disclosures before sale or lease.* Before a purchaser or lessee buys or leases a manufactured home, the retailer must provide the purchaser or lessee with a consumer disclosure. This disclosure may be in a separate document from the sales or leasing contract or may be incorporated, in whole or in part, clearly in a separate section on consumer installation information at the top of the sales or lease contract. The disclosure must include the following information, as applicable:

(1) When the home is to be sited in a state that administers its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with state requirements for the installation of the home;

(2) When the home is to be sited in a state that does not administer its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with federal requirements for

the installation of the home, including installation in accordance with federal installation standards set forth in 24 CFR part 3285 and certification by a licensed installer of installation work, regardless of whether the work is performed by the homeowner or anyone else, and when certification includes inspection by an appropriate person;

(3) For all homes, the home might also be required to comply with additional local requirements for its installation;

(4) For all homes, additional information about the requirements disclosed under paragraphs (b)(1) through (b)(4) of this section is available from the retailer and, in the case of the federal requirements, is available in part 3286 of Title 24 of the Code of Federal Regulations and from the U.S. Department of Housing and Urban Development (HUD);

(5) For all homes, compliance with any additional federal, state, and local requirements, including a requirement for inspection of the installation of the home, may involve additional costs to the purchaser or lessee; and

(6) For all homes, a recommendation that any home that has been reinstalled after its original installation should be professionally inspected after it is set up, in order to assure that it has not been damaged in transit and is properly installed.

§ 3286.9 Manufacturer shipment responsibilities.

(a) *Providing information to HUD.* Except as provided in paragraph (b) of this section, at or before the time that each manufactured home is shipped by a manufacturer, the manufacturer must provide HUD with information, as applicable, about:

(1) The serial number and manufacturer's certification label number of the home;

(2) The manufacturer of the home;

(3) The name and address of the retailer or distributor that has arranged for the home to be shipped, and the retailer's identification number; and

(4) Where different from the retailer's or distributor's address, the location to which the home is being shipped and the purchaser's name.

(b) *Method of providing information.* (1) The manufacturer must provide this information by either:

(i) Entering the data into an Internet-based tracking system established by HUD; or

(ii) Providing a copy of the information to HUD by facsimile, e-mail, first-class, or overnight delivery.

(2) If the information is provided to HUD by facsimile, e-mail, first-class, or overnight delivery, the manufacturer must send the information to HUD no later than 10 business days after the date the manufactured home is shipped by the manufacturer. The information must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to an alternative address, fax number, or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the Web site is *www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm* and the toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927–2891, ext. 57.

(c) *Shipment of home to retailer or distributor.* At the time the manufactured home is shipped to a retailer or distributor, the manufacturer must provide notice to the retailer or distributor that tracking information for the home is being provided to HUD, and the information must be updated by the retailer or distributor in accordance with the requirements in § 3286.13. Such notice must include at least all of the information required in paragraph (a) of this section. The manufacturer is also encouraged to provide notice to the retailer that reminds the retailer of its other responsibilities under this part.

(d) *Manufacturer's installation instructions.* The manufacturer is required to include in its installation instructions for the home a notice that the home is required to be installed in accordance with:

(1) An installation design and instructions that have been reviewed and approved by the manufacturer and either its DAPIA or the Secretary; or

(2) An installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

§ 3286.11 Temporary storage of units.

Pursuant to § 3286.5(d), the manufacturer is required to provide instructions for the temporary support of its manufactured homes or sections of homes. Every manufacturer, distributor, and retailer is required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by the manufacturer, distributor, or retailer in accordance with the manufacturer's instructions.

§ 3286.13 Tracking of homes sold by retailer or distributor.

(a) *Record retention requirements in all states.* The retailer or distributor must maintain a copy of a sales or lease record for each home sold or leased to a purchaser for 5 years from the date of sale under § 3286.117(a). The sales or lease record must contain the following information:

(1) The home's serial number and manufacturer's certification label number;

(2) The name and address of the retailer or distributor that is selling or leasing the home, and the retailer's identification number;

(3) The state and address where the home is to be sited, and, if known, the name of the local jurisdiction;

(4) The name of the purchaser or lessee of the home.

(b) *Tracking information in HUD-administered states.* At the time that a purchaser or lessor enters into a contract to purchase or lease a manufactured home to be sited in a state in which HUD administers its installation program, the retailer or distributor of the home must provide HUD with the information set forth in paragraph (a) of this section.

(c) *Method of providing information.* (1) When required, the retailer or distributor must provide the information in paragraph (a) of this section by either:

(i) Entering the data into an Internet-based tracking system established by HUD; or

(ii) Providing a copy of the information to HUD by facsimile, e-mail, first-class, or overnight delivery.

(2) If the information is provided to HUD by facsimile, e-mail, first-class, or overnight delivery, the retailer or distributor must send the information to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the current URL of the Web site is *www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm* and the current toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927–2891, ext. 57.

(d) *Compliance with HUD-administered installation program.* A retailer or distributor that sells or leases a home to be sited in a state in which HUD administers an installation program under this part must also comply with the applicable requirements set forth in subparts B through G of this part. Any person can

identify the states in which HUD administers an installation program under this part by referring to a list on a website maintained by HUD or by calling HUD. For convenience only, the current URL of the Web site is *www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm* and the current toll-free telephone number to contact the HUD Office of Manufactured Housing Programs is (800) 927–2891, ext. 57.

§ 3286.15 Waiver of rights invalid.

Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either the HUD installation program or a state-qualifying installation program is void.

§ 3286.17 Consultation with the Manufactured Housing Consensus Committee.

The Secretary will seek input from the MHCC when revising the installation program regulations in this part 3286. Before publication of a proposed rule to revise these regulations, the Secretary will provide the MHCC with an opportunity to comment on such revision. The MHCC may send to the Secretary any of the MHCC's own recommendations to adopt new installation program regulations or to modify or repeal any of the regulations in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. The Secretary will either: accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedures Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or reject the recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection. This section does not supercede section 605 of the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5404).

Subpart B—Certification of Installation in HUD-Administered States

§ 3286.101 Purpose.

The purpose of this subpart B is to establish the systems for tracking and certifying a manufactured home installation that is to be completed in accordance with the HUD-administered installation program.

§ 3286.103 DAPIA-approved installation instructions.

(a) *Providing instructions to purchaser.* For each manufactured home sold to a purchaser, the retailer must ensure that the purchaser is provided with a copy of either:

(1) The manufacturer's DAPIA-approved installation instructions for the home; or

(2) If the installation requires a design that is different from that provided by the manufacturer, an installation design and instructions that do not take the home out of compliance with the construction and safety standards in part 3280 of this chapter and that have been reviewed and certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(b) *Providing instructions to installer.* When the retailer agrees to provide any set-up in connection with the sale of the home, the retailer must provide a copy of the same DAPIA-approved installation instructions or, as applicable, installation design and instructions to each company or, in the case of sole proprietor, to each individual who performs set-up or installation work on the home.

§ 3286.105 Requirement for installer licensing.

The installer that installs a manufactured home in a state that does not have a qualifying installation program must be certified or licensed, in accordance with the requirements in subpart C of this part.

§ 3286.107 Installation in accordance with standards.

(a) *Compliance with installation standards.* (1) A manufactured home that is subject to the requirements of this subpart B must be installed in accordance with, at a minimum, the installation standards set forth in part 3285 of this chapter. If the manufacturer's installation instructions do not comply with such installation standards, the manufacturer is responsible for any aspect of installation that is completed in accordance with its instructions and that does not comply with the installation standards.

(2) For purposes of determining installer compliance with this paragraph (a), an installer will be deemed to have installed a manufactured home as required if the home is installed in accordance with installation design and instructions that are:

(i) Provided by the manufacturer and are either:

(A) Approved by the DAPIA; or

(B) Determined by the Secretary to provide protection to residents of manufactured homes that equals or exceeds the protection provided by the HUD federal installation standards in part 3285 of this chapter; or

(ii) Certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(3) All installation work must be in conformance with accepted practices to ensure durable, livable, and safe housing, and must demonstrate acceptable workmanship reflecting, at a minimum, journeyman quality of work of the various trades.

(b) *Secretarial approval of manufacturer's designs.* A manufacturer that seeks a Secretarial determination under paragraph (a)(2)(i)(B) of this section that its installation designs and instructions provide protection to residents of manufactured homes that equals or exceeds the protection provided by the HUD federal installation standards in part 3285 of this chapter must send the request for such determination and a copy of the applicable designs and instructions to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs.

(c) *Compliance with construction and safety standards.* The installer must not take the home out of compliance with the construction and safety standards applicable under part 3280 of this chapter.

(d) *Homeowner installations.* The purchaser of a home sited in a state in which HUD administers the installation program may perform installation work on the home that is in accordance with paragraph (a) of this section, provided that the work is inspected as required under this part and a licensed installer certifies the installation in accordance with § 3286.111.

(e) *Compliance with construction and safety standards.* This rule does not alter or affect the requirements of the Act concerning compliance with the construction and safety standards, and the implementing regulations in parts 3280 and 3282 of this chapter, which apply regardless of where the work is completed.

§ 3286.109 Inspection requirements—generally.

The installer or the retailer must arrange for the inspection of the installation work on any manufactured home that is sited in a state without a

qualifying installation program. Before the sale of the home is considered complete, the installer must certify, and the inspector must verify, the home as having been installed in conformance with the requirements of § 3286.107(a). The requirements for installer certification are set out in subpart E of this part.

§ 3286.111 Installer certification of installation.

(a) *Certification required.* When the installation work is complete, an installer must certify that:

(1) The manufactured home has been installed in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter; and

(2) The installation of the home has been inspected as required by § 3286.503 and an inspector has verified the installation as meeting the requirements of this part.

(b) *Recipients of certification.* The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser for the sale of the home, and to the purchaser or other person with whom the installer contracted for the installation work.

§ 3286.113 Information provided by retailer.

(a) *Installation information required.* In addition to the information required to be provided by all retailers or distributors by § 3286.13 and upon receiving the installer's original certification of installation pursuant to § 3286.111, the retailer must provide HUD with:

(1) The name, address, and telephone number of the licensed installer;

(2) The date of installer certification of completion of the installation;

(3) The date a qualified inspector verified the installation as being in compliance with the requirements of this part;

(4) The name, address, and telephone number of the qualified inspector who performed the inspection of the installation as required by § 3286.109; and

(5) The type of support, anchoring, or foundation system that is being used in the installation of the home, if known.

(b) *Method of providing information.* (1) The retailer or distributor must provide the information set forth in paragraphs (a) and (b) of this section as soon as practical by either:

(i) Entering the data into an Internet-based tracking system established by HUD; or

(ii) Providing a copy of the information to HUD by facsimile, email, or first-class or overnight delivery.

(2) The information must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW, Room 9164, Washington, DC 20410–8000, or to a fax number or email address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the website is *www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm* and the toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927–2891, ext. 57.

(c) *Correcting information.* If the information provided by the retailer changes after it has been entered into the tracking system or provided to HUD, the retailer must correct the information within 10 business days after the retailer learns of the change.

§ 3286.115 Date of installation.

For purposes relating to the HUD dispute resolution program established in part 3288 of this chapter, the date of installation will be the date all utilities are connected and the manufactured home is ready for occupancy as established, if applicable, by a certificate of occupancy, except as follows: if the manufactured home has not been sold to the first person purchasing the home in good faith for purposes other than resale by the date the home is ready for occupancy, the date of installation is the date of the purchase agreement or sales contract for the manufactured home.

§ 3286.117 Completion of sale date.

(a) *Date of sale defined.* For purposes relating only to determining violations of the procedural and enforcement regulations for the construction and safety standards, the date the sale of a manufactured home will be considered complete will be the later of:

(1) The date of the retailer's concurrence under § 3286.113; or

(2) The date that the purchaser receives a copy of the installer's completed certification, as set forth in § 3286.111.

(b) *Compliance with construction and safety standards.* If an installer installs a home in such a way as to create an imminent safety hazard or cause the home to not comply with the construction and safety standards in part 3280 of this chapter, the sale or lease of the home may not be completed until the home is corrected.

Subpart C—Installer Licensing in HUD-Administered States

§ 3286.201 Purpose.

The purpose of this subpart C is to establish the requirements for a person to qualify to install a manufactured home in accordance with the HUD-administered installation program.

§ 3286.203 Installation license required.

(a) *Installation license required.* (1) Any individual or company that engages in the business of directing, supervising, or controlling initial installations of new manufactured homes in a state without a qualifying installation program must itself have, or must employ someone who has, a valid manufactured home installation license issued in accordance with the requirements of this subpart C. For each installation covered under the requirements the licensed installer, and any company that employs the licensed installer, will be responsible for the proper and competent performance of all employees working under the licensed installer's supervision and for assuring that the installation work complies with this part.

(2) A business that employs a licensed installer to represent the business and hold the installer's license retains primary responsibility for performance of the installation work in compliance with the requirements of this part.

(3) A license is not required for individuals working as direct employees of a licensed installer or for the company that employs a licensed installer, provided that those individuals are covered by the licensed installer's or employer's general liability insurance and are supervised by a licensed installer.

(4) The installer must display an original or copy of a valid installation license at the site of the installation at all times until the installer certifies the installation as required in § 3286.411.

(5) The installer is responsible for understanding and following, as applicable, the approved manufacturer installation instructions and any alternative installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(b) *Installation license not required.* An installation license is not required for:

(1) Site preparation that is not subject to the requirements of part 3285 of this chapter;

(2) Connection of utilities to the manufactured home;

(3) Add-ons subject to the requirements of § 3282.8(j);

(4) Temporary installations on dealer, distributor, manufacturer, or other sales or storage lots, when the manufactured home is not serving as an occupied residence;

(5) Home maintenance, repairs, or corrections, or other non-installation-related work performed by the home manufacturer under warranty or other obligations or service agreements;

(6) Installations performed by authorized representatives of the Federal Emergency Management Agency in order to provide emergency housing after a natural disaster; or

(7) Work performed at the home site that is not covered by the federal installation standards in part 3285 of this chapter or the requirements of this part.

§ 3286.205 Prerequisites for installation license.

(a) *Required experience.* (1) In order to obtain an installation license to perform manufactured home installations under the HUD-administered installation program, an individual must meet at least one of the following minimum experience requirements:

(i) 1,800 hours of experience installing manufactured homes;

(ii) 3,600 hours of experience in the construction of manufactured homes;

(iii) 3,600 hours of experience as a building construction supervisor;

(iv) 1,800 hours as an active manufactured home installation inspector;

(v) Completion of one year of a college program in a construction-related field; or

(vi) Any combination of experience or education from paragraphs (a)(1)(i) through (a)(5)(v) that totals 3,600 hours.

(2) An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may be exempted by the Secretary from complying with these experience requirements, if the Secretary determines that the state requirements are substantially equal to the HUD experience requirements.

(b) *Required training*—(1) *Initial applicant.* An applicant for an installation license must complete 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation program regulations in this part. An installer who is licensed to perform installations in a state with a qualified installation program may postpone the training requirements of this section for a period of one year from the effective date of this rule.

(2) *Renewal applicant.* In order to qualify for renewal of an installation license, the licensed installer must complete 8 hours of continuing education during the 3-year license period, including in any particular subject area that may be required by HUD to be covered in order to assure adequate understanding of installation requirements.

(3) The training required under this paragraph (b) must be conducted by trainers who meet the requirements of subpart D of this part and must meet the curriculum requirements established in §§ 3286.308 or 3286.309, as applicable.

(c) *Testing.* An applicant for an installation license must have successfully received a passing grade of 70 percent on a HUD-administered or HUD-approved examination covering the Manufactured Home Installation Program and the federal installation standards in part 3285.

(d) *Liability insurance.* An applicant for an installation license must provide evidence of, and must maintain, general liability insurance in the amount of at least $1 million. HUD may require the licensed installer to provide proof of insurance at any time. The licensed installer must notify HUD of any changes or cancellations in liability insurance coverage.

§ 3286.207 Process for obtaining installation license.

(a) *Where to apply.* An applicant for an initial or renewed installation license must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW, Room 9164, Washington, DC 20410–8000, or to a fax number or email address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the current URL of the website is *www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm*, and the current toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927–2891, ext. 57.

(b) *Proof of experience.* Every applicant for an initial installation license must submit verification of the experience required in § 3286.205(a). This verification may be in the form of statements by past or present employers or a self-certification that the applicant meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as an installer, including the dates and type of such employment. An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such certification or license.

(c) *Proof of training.* Every applicant for an initial installation license, or the renewal of an installation license, must submit verification of successful completion of the training required in § 3286.205(b). This verification must be in the form of a certificate of completion from a qualified trainer that the applicant has completed the requisite number of hours of a qualifying curriculum, as set out in §§ 3286.308 or 3286.309.

(d) *Proof of insurance.* Every applicant for an installation license must submit the name of the applicant's general liability insurance carrier and the number of the policy required in § 3286.205(d).

(e) *Other application submissions.* (1) Every applicant for an installation license must submit a list of all states in which the applicant holds a similar installation certification or license, and a list of all states in which the applicant has had such a certification or license revoked, suspended, or denied.

(2) When the examination is not administered by HUD, every applicant for an initial installation license must submit certification of a passing grade on the examination required by § 3286.205(c).

(f) *Issuance or denial of an installation license.* (1) When HUD confirms that an applicant has met the requirements in this subpart C, HUD will either:

(i) Provide an installation license to the applicant that, as long as the installation license remains in effect, establishes the applicant's qualification to install manufactured homes in a state subject to the HUD-administered installation program; or

(ii) Provide a written explanation of why HUD deems the applicant to not qualify for an installation license, including on grounds applicable under § 3286.209 for suspension or revocation of an installation license and any other specified evidence of inability to adequately meet the requirements of this part.

(2) An applicant who is denied an installation license under this subpart C, other than for failure to pass the installation license test, may request from HUD an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter for the purpose of establishing the applicant's qualifications to obtain an installation license.

(g) *Assignment of license prohibited.* An installation license issued under this part may not be transferred, assigned, or pledged to another entity or individual.

§ 3286.209 Denial, suspension, or revocation of installation license.

(a) *Oversight.* The Secretary may make a continuing evaluation of the manner in which each licensed installer is carrying out his or her responsibilities under this subpart C.

(b) *Denial, suspension, or revocation.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may deny, suspend, or revoke an installation license under this part. An installation license may be denied, suspended, or revoked for, among other things:

(1) Providing false records or information to HUD;

(2) Refusing to submit information that the Secretary requires to be submitted;

(3) Failure to comply with applicable requirements of parts 3285, 3286, or 3288 of this chapter;

(4) Failure to take appropriate actions upon a failed inspection, as provided in § 3286.509;

(5) Fraudulently obtaining or attempting to obtain an installation license, or fraudulently or deceptively using an installation license;

(6) Using or attempting to use an expired, suspended, or revoked installation license;

(7) Violating state or federal laws that relate to the fitness and qualification or ability of the applicant to install homes; or

(8) Engaging in poor conduct or workmanship as evidenced by one or more of the following:

(i) Installing one or more homes that fail to meet the requirements of § 3286.107;

(ii) An unsatisfied judgment in favor of a consumer;

(iii) Repeatedly engaging in fraud, deception, misrepresentation, or knowing omissions of material facts relating to installation contracts;

(iv) Having a similar state installation license or certification denied, suspended, or revoked;

(v) Having the renewal of a similar state installation license or certification denied for any cause other than failure to pay a renewal fee;

(vi) Failure to maintain the insurance required by § 3286.205(d).

(c) *Other criteria.* In deciding whether to suspend or revoke an installation license, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating an installation license.* An installer whose installation license has been denied, suspended, or revoked may submit a new application in accordance with this subpart C. Installers whose installation licenses have been suspended may also reinstate their installation licenses in any manner provided under the terms of their suspensions.

§ 3286. 211 Expiration and renewal of installation licenses.

(a) *Expiration.* Each installation license issued or renewed under this subpart C will expire 3 years after the date of its issuance or renewal.

(b) *Renewal.* An application for the renewal of an installation license must include the information required by, and must be submitted to, HUD in accordance with § 3286.207, and must be submitted at least 60 days before the date the license expires. Any person applying for a license renewal after the date the license expires must apply for a new installation license following the requirements established under this subpart C for application for an initial installation license.

Subpart D—Training of Installers in HUD-Administered States

§ 3286.301 Purpose.

The purpose of this subpart D is to establish the requirements for a person to qualify to provide the training required under subpart C of this part. This training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program.

§ 3286.303 Responsibilities of qualified trainers.

(a) *Curriculum and hours.* In providing training to installers for the purpose of qualifying installers under the HUD-administered installation program, qualified trainers must adequately address the curriculum and instruction-time requirements established in subparts C and D of this part.

(b) *Attendance records.* Qualified trainers must maintain records of the times, locations, names of attendees at each session, and content of all courses offered. When an attendee misses a significant portion of any training session, the trainer must assure that the attendee makes up the missed portion of the instruction.

(c) *Certificates of completion of training.* Qualified trainers must provide certificates of completion to course attendees that indicate the level of compliance with the applicable curriculum and time requirements under subparts C and D of this part.

(d) *Record retention.* All records maintained by trainers and continuing education providers must be retained for 5 years, and must be made available to HUD upon request.

(e) *Testing of installers.* Qualified trainers may be authorized to administer the installation license testing required for initial licensing of installers, as set forth in § 3286.205(c).

§ 3286.305 Installation trainer criteria.

(a) *Trainer qualification required.* (1) All classes that provide manufactured home installation education classes used to satisfy the requirements for the initial issuance and renewal of installation licenses under subpart C of this part must be taught by trainers who are registered with HUD as qualified trainers. In order to register with HUD as a qualified trainer, a person must meet the experience requirements of this section.

(2) Any entity other than a natural person may provide initial training and continuing education, as long as such entity establishes its qualification as a trainer by providing evidence and assurance that the entity's individual trainers meet the requirements of this section.

(b) *Experience prerequisites.* In order to qualify as a trainer, an individual or other training entity must provide to HUD evidence that each individual who will be responsible for providing training:

(1) Has a minimum of 3,600 hours of experience in one or more of the following:

(i) As a supervisor of manufactured home installations;

(ii) As a supervisor in the building construction industry;

(iii) In design work related to the building construction industry; or

(2) Has completed a 2-year educational program in a construction-related field.

(c) *Certification of curriculum.* In order to register as a qualified trainer, an individual or other training entity must submit to HUD certification that training provided in accordance with this

subpart D will meet the curriculum requirements established in § 3286.309.

§ 3286.307 Process for obtaining trainer's qualification.

(a) *Where to apply.* An applicant for qualification as a trainer must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW, Room 9164, Washington DC 20410–8000, or to a fax number or email address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the website is *www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm*, and the toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927–2891 ext. 57.

(b) *Proof of experience.* (1) Every individual applicant for initial qualification as a trainer must submit verification of the experience required in § 3286.305. This verification may be in the form of statements by past or present employers or a self-certification that the applicant meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as a trainer, including the dates and type of such employment. A trainer who is licensed, or otherwise certified, to provide manufactured home installation training in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such license or other certification. An individual who applies for renewal qualification as a trainer is not required to submit additional proof of experience.

(2) An entity that seeks to be designated as a qualified trainer must provide evidence and assurance that the entity's individual trainers meet the experience requirements in § 3286.305.

(c) *Other qualification information.* (1) An applicant for initial or renewal qualification as a trainer must submit to HUD a list of all states in which the applicant has had a similar training qualification revoked, suspended, or denied.

(2) An applicant also must submit to HUD certification that training provided in accordance with this subpart D will meet the curriculum requirements established in §§ 3286.308 or 3286.309, as applicable.

(d) *Confirmation or denial of qualification.* (1) When HUD confirms that an applicant has met the experience and curriculum requirements in this section, HUD will either:

(i) Provide to the applicant a written confirmation that the applicant is a qualified trainer under this part, and will add the applicant's name to a list maintained by HUD of qualified trainers; or

(ii) Provide a written explanation of why HUD deems the applicant to not qualify as a trainer, including on grounds applicable under § 3286.311 for suspension or revocation of a qualification and any other specified evidence of inability to meet the requirements of this part.

(2) An applicant whose qualification is denied by HUD may request an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter for the purpose of establishing the applicant's qualifications to be a qualified trainer or the adequacy of any training curriculum that is challenged by HUD.

(e) *Assignment of qualification prohibited.* A qualification issued under this subpart D may not be transferred, assigned, or pledged to another entity or individual.

§ 3286.308 Training curriculum.

(a) *Curriculum for initial installer licensing.* The training provided by qualified trainers to installers to meet the initial requirements of the HUD-administered installation program must include at least 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation program regulations in this part. The curriculum must include, at a minimum, training in the following areas:

(1) An overview of the Act and the general regulatory structure of the HUD manufactured housing program;

(2) An overview of the manufactured home installation standards and regulations established in parts 3285 and 3286 of this chapter, and specific instruction including:

(i) Pre-installation considerations;

(ii) Site preparation;

(iii) Foundations;

(iv) Anchorage against wind;

(v) Optional features, including comfort cooling systems;

(vi) Ductwork and plumbing and fuel supply systems;

(vii) Electrical systems; and

(viii) Exterior and interior close-up work.

(3) An overview of the construction and safety standards and regulations found in parts 3280 and 3282 of this chapter;

(4) Licensing requirements applicable to installers;

(5) Installer responsibilities for correction of improper installation, including installer obligations under applicable state and HUD manufactured housing dispute resolution programs;

(6) Inspection requirements and procedures;

(7) Problem-reporting mechanisms;

(8) Operational checks and adjustments; and

(9) Penalties for any person's failure to comply with the requirements of this part 3286 and parts 3285 and 3288 of this chapter.

(b) *Updating curriculum.* Qualified trainers must revise and modify course curriculum as needed to include, at a minimum, any relevant modifications to the Act or the implementing standards and regulations in this chapter, as well as to provide any training further mandated by HUD.

§ 3286.309 Continuing education'trainers and curriculum.

(a) *HUD-mandated elements.* Only qualified trainers are permitted to provide any training on particular subject areas that are required by HUD to be an element of the continuing education requirement set out in § 3286.205(b)(2) for the renewal of an installer's license. In implementing this requirement, HUD will:

(1) Establish the minimum number of hours and the required curriculum for such subject areas, according to experience with the program and changes in program requirements; and

(2) Provide information about the hours and curriculum directly to qualified trainers and licensed installers, or through general publication of the information.

(b) *Other training.* (1) The remainder of the 8 hours required to meet the continuing education requirement may be met through training provided either by qualified trainers or by any combination of the following:

(i) Accredited educational institutions, including community colleges and universities;

(ii) A provider of continuing education units who is certified by the International Association for Continuing Education and Training;

(iii) Agencies at any level of government; and

(iv) State or national professional associations.

(2) The curriculum for the remainder of the 8 hours of continuing education training must relate to any aspect of manufactured home installation or construction, or to the general fields of building construction or contracting.

§ 3286.311 Suspension or revocation of trainer's qualification.

(a) *Oversight.* The Secretary may make a continuing evaluation of the manner in which each qualified trainer is carrying out the trainer's responsibilities under this subpart D.

(b) *Suspension or revocation of qualification.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke a trainer's qualification under this part. A trainer's qualification may be suspended or revoked for cause, which may include:

(1) Providing false records or information to HUD;

(2) Refusing to submit information required to be submitted by the Secretary in accordance with the Act;

(3) Certifying, or improperly assisting certification of, a person as having met the training requirements established in this part when that person has not completed the required training;

(4) Failing to appropriately supervise installation training that is used to meet the requirements of this part and that is provided by other persons; and

(5) Any other failures to comply with the requirements of this part.

(c) *Other criteria.* In deciding whether to suspend or revoke a trainer's qualification, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating qualification.* A trainer whose qualification has been suspended or revoked may submit a new application to be qualified in accordance with this subpart D no sooner than 6 months after the date of suspension or revocation. A trainer whose qualification has been suspended may also reinstate the qualification in any manner provided under the terms of the suspension.

§ 3286.313 Expiration and renewal of trainer qualification.

(a) *Expiration.* Each notice of qualification issued or renewed under this subpart D will expire 5 years after the date of its issuance or renewal.

(b) *Renewal.* An application for the renewal of a trainer qualification must be submitted to HUD in accordance with § 3286.307, and must be submitted at least 60 days before the date the trainer's term of qualification expires. Any person applying for a qualification renewal after the date the qualification expires must apply for a new qualification, following the requirements established under this subpart D for application for initial qualification as an installation trainer.

Subpart E—Installer Responsibilities of Installation in HUD-Administered States

§ 3286.401 Purpose.

The purpose of this subpart E is to set out the responsibilities of the installer who is accountable for the installation of a manufactured home in compliance with the requirements of the HUD-administered installation program.

§ 3286.403 Licensing requirements.

An installer of manufactured homes must comply with the licensing requirements set forth in subpart C of this part.

§ 3286.405 Site suitability.

(a) *Site appropriateness.* Before installing a manufactured home, the installer must:

(1) Verify that the site is accessible;

(2) Verify that the site is appropriate for the foundation or support and stabilization system that is to be used to install the home in accordance with the federal installation standards or alternative requirements in part 3285 of this chapter;

(3) Verify, by checking the data plate required by § 3280.5 of this chapter to be affixed to the home, that the home is designed for the roof load, wind load, and thermal zones that are applicable to the intended site; and

(4) Verify that the installation site is protected from surface run-off and can be graded in accordance with part 3285.

(b) *Notification of inappropriate site.* If the installer determines that the home cannot be installed properly at the site, the installer must:

(1) Notify the purchaser or other person with whom the installer contracted for the installation work;

(2) Notify the retailer that contracted with the purchaser for the sale of the home; and

(3) Decline to install the home until the site and the home are both verified by the installer as suitable for the site under this section.

§ 3286.407 Supervising work of crew.

The installer will be responsible for the work performed by each person engaged to perform installation tasks on a manufactured home in accordance with the HUD-administered installation program.

§ 3286.409 Obtaining inspection.

(a) *Inspection obligations.* Within 5 business days of the completion of installation work, the installer must arrange for a third-party inspection in accordance with subpart F of this part, unless the installer and retailer who contracted with the purchaser for the sale of the home agree in writing that during the same time period the retailer will arrange for the inspection. The inspection must be performed by an inspector who meets the qualifications set forth in § 3286.511.

(b) *Contract rights not affected.* Failure to arrange for an inspection of a home within 5 business days will not affect the validity or enforceability of any sale or contract for the sale of any manufactured home.

(c) *State or local permits.* The licensed installer should obtain all necessary permits required under state or local laws.

(d) *Completion of sale.* For purposes of determining the responsibilities of a manufacturer, retailer, or distributor under subpart I of part 3282 of this chapter, the sale of a manufactured home will not be considered complete until:

(1) Following the procedures established in § 3286.507, a qualified inspector approves the home as having been installed in conformance with part 3285 of this chapter; and

(2) The installer certifies the installation as set forth in § 3286.111.

§ 3286.411 Certifying installation.

(a) *Certification required.* Upon completion of the installation work, a licensed installer must visit the job site and certify that:

(1) It has installed the manufactured home in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter; and

(2) The installation of the home has been inspected as required by this part.

(b) *Recipients of certification.* The installer must provide its original certification to the retailer, and must provide a copy of the certification to the purchaser.

(c) *Retailer to update records.* Upon receiving the installer's original certification of installation, the retailer must enter the following additional information into the retailer's records on the home:

(1) The date of installer certification of completion of the installation;

(2) The date a qualified inspector approved the installation as being in

compliance with the requirements of this part; and

(3) The name, address, and telephone number of the qualified inspector who performed the inspection of the installation.

§ 3286.413 Recordkeeping.

(a) *Records to be retained.* The installer must retain:

(1) A record of the name and address of the purchaser or other person with whom the installer contracted for the installation work and the address of the home installed;

(2) A copy of the contract pursuant to which the installer performed the installation work;

(3) A copy of any notice from an inspector disapproving the installation work;

(4) A copy of the qualified inspector's verification of the installation work;

(5) A copy of the installer's certification of completion of installation in accordance with the requirements of this part; and

(6) A copy of foundation designs used to install the home if different from the designs provided by the manufacturer, including evidence that the foundation designs and instructions were certified by a professional engineer or registered architect.

(b) *Retention requirement.* The records listed in paragraph (a) of this section must be maintained for a period of 5 years after the installer certifies completion of installation.

Subpart F—Inspection of Installations in HUD-Administered States

§ 3286.501 Purpose.

The purpose of this subpart F is to provide additional detail about the inspection that must be performed by a qualified third-party inspector before the installation of a manufactured home may be approved by the inspector and certified by the installer under the HUD-administered installation program.

§ 3286.503 Inspection required.

(a) *Timing of requirements.* Within 5 business days of the completion of the installation of each manufactured home, the installer must arrange for a third-party inspection of the work performed, unless the installer and retailer who contracted with the purchaser for the sale of the home agree in writing that during the same time period the retailer will arrange for the inspection. Such inspection must be performed as soon as practicable by an inspector that meets the qualifications set out in § 3286.511. The scope of the inspections that are required to be performed is addressed in § 3286.505.

(b) *Disclosure of requirement.* At the time of sale, the retailer must disclose to the purchaser, in a manner provided in § 3286.7, that the manufactured home must be installed in accordance with applicable federal and state law, including requirements for a third-party inspection of the installation. If the cost of inspection of the home's installation is not included in the sales price of the home, the sales contract must include a clear disclosure about whether the purchaser will be charged separately for the inspection of the home's installation and the amount of such charge.

§ 3286.505 Minimum elements to be inspected.

The installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements included in a checklist. The checklist must include assurance that all permits needed to place the manufactured home on the site have been obtained, and that each of the following elements complies with the requirements of part 3285 of this chapter:

(a) Site location with respect to home design and construction;

(b) Consideration of site-specific conditions;

(c) Site preparation;

(d) Foundation construction;

(e) Anchorage;

(f) Installation of optional features;

(g) Completion of ductwork, plumbing, and fuel supply systems;

(h) Electrical systems;

(i) Exterior and interior close-up;

(j) Skirting, if installed; and

(k) Completion of operational checks and adjustments.

§ 3286.507 Verifying installation.

(a) *Verification by inspector.* When an inspector is satisfied that the manufactured home has been installed in accordance with the requirements of this part, the inspector must provide verification of the installation and return the evidence of such verification to the installer.

(b) *Certification by installer.* (1) Once an installation has been inspected and verified, the installer is permitted to certify the installation as provided in § 3286.111. The installer must provide a signed copy of the certification to:

(i) The retailer that contracted with the purchaser for the sale of the home;

(ii) The purchaser; and

(iii) Any other person that contracted to obtain the services of the installer for the installation work on the home.

(2) The installer must retain records in accordance with § 3286.413.

§ 3286.509 Reinspection upon failure to pass.

(a) *Procedures for failed inspection.* If the inspector cannot verify the installation of the manufactured home, the inspector must immediately notify the installer and explain the reasons why the installer cannot issue verification that the installation complies with the requirements of this part. After the installation is corrected, it must be reinspected before verification can be issued.

(b) *Cost of reinspection.* If there is any cost for the reinspection of an installation that an inspector has refused to verify, that cost must be paid by the installer or the retailer and, absent a written agreement with the purchaser that specifically states otherwise, that cost cannot be charged to the purchaser of the manufactured home.

§ 3286.511 Inspector qualifications.

(a) *Qualifications.* Any individual who meets at least one of the following qualifications is permitted to review the work and verify the installation of a manufactured home that is subject to the requirements of the HUD-administered installation program:

(1) A manufactured home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided that the jurisdiction has a residential code enforcement program;

(2) A professional engineer;

(3) A registered architect; or

(4) A HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA).

(b) *Independence required.* The inspector must be independent of the manufacturer, the retailer, the installer, and any other person that has a monetary interest, other than collection of an inspection fee, in the completion of the sale of the home to the purchaser.

(c) *Suspension or revocation of inspection authority.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke an inspector's authority to inspect manufactured home installations under this part in HUD-administered states. An inspector's authority may be suspended or revoked for cause. In deciding whether to suspend or revoke an inspector's authority to conduct such installation inspections, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and

siting of manufactured homes are not unduly disrupted.

(d) *Reinstating inspection authority.* An inspector whose authority to inspect manufactured home installations in HUD-administered states has been suspended or revoked under this section may apply for reauthorization by contacting the Administrator of HUD's Office of Manufactured Housing Programs.

Subpart G—Retailer Responsibilities in HUD-Administered States

§ 3286.601 Purpose.

The purpose of this subpart G is to set out the requirements that apply to a retailer with respect to the federal installation requirements applicable to new manufactured homes that the retailer sells or leases and that will be installed in states that do not have qualifying installation programs. These requirements are in addition to other requirements that apply to retailers of manufactured homes pursuant to other parts of this chapter.

§ 3286.603 At or before sale.

(a) *Before contract.* (1) The retailer is required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by a retailer in accordance with the manufacturer's instructions.

(2) Before a purchaser or lessee signs a contract of sale or lease for a manufactured home, the retailer must:

(i) Provide the purchaser or lessee with a copy of the consumer disclosure statement required in § 3286.7(b); and

(ii) Verify that the wind, thermal, and roof load zones of the home being purchased or leased are appropriate for the site where the purchaser or lessee plans to install the home for occupancy; and

(iii) If the cost of inspection of the home's installation is not included in the sales price of the home, provide the disclosure required in § 3286.7(b).

(b) *Occupancy site not known.* When at the time of purchase the purchaser does not know the locale for the initial siting of the home for occupancy, the retailer must advise the purchaser that:

(1) The home was designed and Constructed for specific wind, thermal, and roof load zones; and

(2) If the home is sited in a different zone, the home may not pass the required installation inspection because the home will have been installed in a manner that would take it out of compliance with the construction and safety standards in part 3280 of this chapter.

§ 3286.605 After sale.

(a) *Tracking installation information.* The retailer is responsible for providing to HUD the information required pursuant to §§ 3286.13 and 3286.113.

(b) *Other tracking and compliance requirements.* The retailer continues to be responsible for compliance with the tracking and compliance requirements set out in subpart F of part 3282 of this chapter, which are related to HUD construction and safety standards.

§ 3286.607 Recordkeeping.

The retailer is responsible for the reporting and recordkeeping requirements under §§ 3286.13, 3286.113, and 3286.411, as applicable.

Subpart H—Oversight and Enforcement in HUD-Administered States

§ 3286.701 Purpose.

The purpose of this subpart H is to set out the mechanisms by which manufacturers, retailers, distributors, installers, and installation inspectors will be held accountable for assuring the appropriate installation of manufactured homes. The requirements in subpart A of this part are applicable in all states, and the requirements in subparts B through G of this part are applicable in states where the HUD-administered installation program operates. It is the policy of the Secretary regarding manufactured home installation program enforcement matters to cooperate with state or local agencies having authority to regulate the installation of manufactured homes. In addition to actions expressly recognized under this subpart H and other provisions in this part, however, in order to oversee the system established by the regulations in this part, HUD may take any actions authorized by the Act.

§ 3286.703 Failure to comply.

(a) *Penalties and injunctive relief.* Failure to comply with the requirements of this part is a prohibited act under section 610(a)(7) of the Act, 42 U.S.C. 5409(a). Any person who fails to comply with the requirements of this part is subject to civil and criminal penalties, and to actions for injunctive relief, in accordance with sections 611 and 612 of the Act, 42 U.S.C. 5410 and 5411.

(b) *Presentation of views.* When practicable, the Secretary will provide notice to any person against whom an action for injunctive relief is contemplated and will afford such person an opportunity to request a presentation of views. The procedures set forth in §§ 3282.152 through 3282.154 of this chapter shall apply to each request to present views and to each presentation of views authorized in accordance with this section.

(c) *Investigations.* The procedures for investigations and investigational proceedings are set forth in part 3800 of this chapter.

§ 3286.705 Applicability of dispute resolution program.

(a) *Generally.* Regardless of any action taken under § 3286.703, for any defect in a manufactured home that is reported during the one-year period beginning on the date of installation, any rights and remedies available under the HUD dispute resolution program as implemented in part 3288 of this chapter continue to apply as provided in that part.

(b) *Waiver of rights invalid.* Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either the HUD or a state dispute resolution program is void.

Subpart I—State Programs

§ 3286.801 Purpose.

The purpose of this subpart I is to establish the requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program. This subpart I also establishes the procedure for determining whether a state installation program meets the requirements of the Act for a qualifying installation program that will operate in lieu of the HUD-administered installation program.

§ 3286.803 State qualifying installation programs.

(a) *Qualifying installation program supersedes.* The HUD-administered installation program will not be implemented in any state that is identified as fully or conditionally accepted under the requirements and procedures of this subpart I.

(b) *Minimum elements.* To be accepted as a fully qualifying installation program, a state installation program must include the following elements:

(1) Installation standards that meet or exceed the requirements of § 3286.107(a) and that apply to every initial installation of a new manufactured home within the state;

(2) The training of manufactured home installers;

(3) The licensing of, or other method of certifying or approving, manufactured home installers to perform the initial installations of new manufactured homes in the state;

(4) Inspection of the initial installations of new manufactured homes in the state; and

(5) Provision of adequate funding and personnel to administer the state installation program.

(c) *Conditional acceptance.* (1) A state installation program that meets the minimum requirements set forth under paragraphs (b)(1) and (5) of this section may be conditionally accepted by the Secretary if the state provides assurances deemed adequate by the Secretary that the state is moving to meet all of the requirements for full acceptance. If the Secretary conditionally accepts a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full acceptance.

(2) A conditionally accepted state will be permitted to implement its own installation program in lieu of the HUD-administered program for a period of not more than 3 years. The Secretary may for good cause grant an extension of conditional approval upon petition by the state.

(d) *Limited exemptions from requirements.* A state installation program may be accepted by the Secretary as a qualifying installation program if the state can demonstrate that it lacks legal authority, as a matter of federal law, to impose the minimum requirements set forth under paragraph (b) of this section in certain geographic areas of the state, but that the minimum requirements do apply in all other geographic areas of the state.

§ 3286.805 Procedures for identification as qualified installation program.

(a) *Submission of certification.* (1) A state seeking identification as a qualified installation program must submit a completed State Installation Program Certification form to the Secretary for review and acceptance.

(2) On or after December 27, 2006, a state must include a qualified installation program as part of any State Plan Application submitted for approval under § 3282.302 of this chapter, if the state does not have a fully or conditionally approved state plan in effect at the time of submission of the State Plan Application. In all other cases, a qualified installation program is permitted, but is not required, to be submitted as a part of a state plan approved in accordance with § 3282.305 of this chapter.

(b) *HUD review and action.* (1) The Secretary will review the State Installation Program Certification form submitted by a state and may request that the state submit additional information as necessary. Unless the Secretary has contacted the state for additional information or has conditionally accepted or rejected the state installation program, the state installation program will be considered to have been accepted by the Secretary as a fully qualifying installation program as of the earlier of:

(i) Ninety days after the Secretary receives the state's completed State Installation Program Certification form; or

(ii) The date that the Secretary issues notification to the state of its full acceptance.

(2) A notice of full or conditional acceptance will include the effective date of acceptance.

(c) *Rejection of state installation program.* (1) If the Secretary intends to reject a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full or conditional acceptance. The state will be given 120 days from the date the Secretary provides such explanation to submit a revised State Installation Program Certification form.

(2) If the Secretary decides that any revised State Installation Program Certification form is inadequate, or if the state fails to submit a revised form within the 60-day period or otherwise indicates that it does not intend to change its form, the Secretary will notify the state that its installation program is not accepted.

(3) A state whose State Installation Program Certification form is rejected has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's installation program has been rejected.

§ 3286.807 Recertification required.

(a) *Recertification.* To maintain its status as a qualified installation program, a state must submit a new State Installation Program Certification form to the Secretary for review and action as follows:

(1) Every 3 years after the state's most recent certification as a qualified installation program; and

(2) Whenever there is a change to the state's installation program or a change in the HUD requirements applicable to qualifying installation programs such that the state's installation program no longer complies with the minimum requirements set forth in § 3286.803(b), regardless of when the state's next regular recertification of its installation program would be due.

(b) *Due date of recertification.* (1) A state's recertification must be filed within 90 days of, as applicable:

(i) The 3-year anniversary of the effective date of the Secretary's acceptance of the state's most recent certification as a qualified installation program; and

(ii) The effective date of the state or HUD action that makes a significant change to the state's installation program.

(2) Upon petition by the state, the Secretary may for good cause grant an extension of the deadline for recertification.

(c) *Effect of recertification failure.* (1) A state whose certification of its installation program has been accepted by the Secretary is permitted to administer its installation program in lieu of the HUD-administered installation program until the effective date of a notification by the Secretary that the state's certification of its installation program is no longer approved.

(2) A state whose recertification of its installation program is rejected by the Secretary has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's recertification of its installation program has been rejected.

§ 3286.809 Withdrawal of qualifying installation program status.

(a) *Voluntary withdrawal.* Any state that intends to withdraw from its responsibilities to administer a qualifying installation program should provide the Secretary with a minimum of 90 days notice.

(b) *Involuntary withdrawal.* Whenever the Secretary finds, after affording notice and an opportunity for a hearing in accordance with subpart D of part 3282 of this chapter, that a state installation program fails to comply substantially with any provision of the installation program requirements or that the state program has become inadequate, the Secretary will notify the state of withdrawal of acceptance or conditional acceptance of the state installation program. The HUD-administered installation program will begin to operate in such state at such time as the Secretary establishes in issuing the finding.

§ 3286.811 Effect on other manufactured housing program requirements.

A state with a qualifying installation program will operate in lieu of HUD with respect to only the installation program established under subparts B through H of this part. No state may permit its installation program, even if it is a qualified installation program under this part, to supersede the requirements applicable to any other aspect of HUD's manufactured housing program. Regardless of whether a state has a qualified installation program:

(a) *Construction and safety standards.* Any responsibilities, rights, and remedies applicable under the Manufactured Home Construction and Safety Standards Act in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts; and

(b) *Dispute resolution.* For any defect in a manufactured home that is reported during the one-year period beginning on the date of installation, any responsibilities, rights, and remedies applicable under the HUD dispute resolution program as implemented in part 3288 of this chapter continue to apply as provided in that part.

§ 3286.813 Inclusion in state plan.

If a state installation program is included in a state plan approved in accordance with § 3282.302 of this chapter, the state installation program is subject to all of the requirements for such a state plan, including annual review by HUD.

Dated: May 23, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210–67–P

Appendix (This appendix will not be codified in the CFR)

STATE INSTALLATION PROGRAM CERTIFICATION FORM

Pursuant to 42 U.S.C. § 5404(c)(2) (section 605(c)(2) of the National Manufactured Housing Construction and Safety Standards Act of 1974), HUD will implement an installation program in each state that does not have a program meeting the requirements of 42 U.S.C. § 5404(c)(3). This State Installation Program Certification form will be used for each state to self-certify the adequacy of its installation program, and for HUD to review that self-certification. Your answers to the following questions are necessary for a proper review, although some questions are for informational purposes only. Please answer each question completely, but concisely. Additional pages may be used if necessary. At the end of the form, please certify the responses as full and accurate.

Submit completed form to: **Office of Manufactured Housing Programs**
Department of Housing and Urban Development
451 Seventh Street, SW, Room 9164
Washington, DC 20410-8000

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

Part I – Contact Information

1. Name, address, telephone number, email address, and functional area of responsibility for each state agency responsible for administering any component (i.e., installation standards, licensing and training of installers, and inspections of installations) of the state's installation program:

2. Name and title of the administrator or director in charge of each state agency identified above:

3. Name, title, address, telephone number, and email address of each person responsible for administering each component of the state's installation program, listed by component area:

Part II – Requirements for State Self-Certification

1. **Describe the state's installation program, providing citations to state laws and regulations that establish requirements for: (a) installation standards; (b) training of installers; (c) licensing of installers; and (d) inspection of manufactured home installations.**

2. **Does the state require that the installation of manufactured homes comply with specific standards? Yes _____ No _____**

3. **If yes, do these installation standards provide residents protection that, as required by 42 U.S.C. § 5404(c)(3)(A), equals or exceeds the protection provided either: (i) by standards established by HUD; or (ii) by designs and instructions that have been determined by the Secretary of HUD to provide protection to residents that equals or exceeds the protection that would be provided by HUD standards for the applicable installations? Yes _____ No _____**

4. **Does the state require that at least the installation standards referenced in item 3, above, apply in all areas and jurisdictions within the state?**

   Yes _____ No _____

   If no, please identify each area or jurisdiction in the state to which state law does not apply the installation standards, and explain why, as a matter of federal law, the state believes it should be exempt from applying the installation standards in each of those areas and jurisdictions.

5. **Describe how the state has determined that its installation standards provide protection that equals or exceeds the protection provided by HUD's installation standards, as required by 42 U.S.C. § 5404(c)(3)(A).**

6. Does the state's manufactured home installation standards address the following items (see, e.g., 24 CFR 3286.505):

a. Site location with respect to home design and construction conditions?

Yes _____ No _____

b. Consideration of site-specific conditions? Yes _____ No _____

c. Site preparation? Yes _____ No _____

d. Foundation construction? Yes _____ No _____

e. Anchorage? Yes _____ No _____

f. Installation of optional features, including comfort cooling systems?

Yes _____ No _____

g. Completion of ductwork, plumbing, and fuel supply systems?

Yes _____ No _____

h. Electrical Systems? Yes _____ No _____

i. Exterior and interior close-up? Yes _____ No _____

j. Skirting, if installed? Yes _____ No _____

k. Completion of operational checks and adjustments?

Yes _____ No _____

7. Describe how the state's manufactured home installation program addresses the training of installers in accordance with 42 U.S.C. § 5404(c)(3)(B). [Please provide information on the amount of training required, both initially and on a continuing basis.]

8. Describe how the state's manufactured home installation program addresses the licensing of, or other certification process for, installers in accordance with 42 U.S.C. § 5404(c)(3)(B).

9. Describe how the state's manufactured home installation program addresses the inspection of initial installations of new manufactured homes in accordance with 42 U.S.C. § 5404(c)(3)(C).

10. Does the state provide adequate funding and personnel to support its installation program? Yes _____ No _____

Part III – Other Information

11. Does the state apply the same installation standards to both the initial siting of manufactured homes and to each subsequent re-siting of manufactured homes?

Yes _____ No _____

If no, explain in general terms how the state's installation standards vary for different categories of manufactured homes.

12. Does the state require that all manufactured home installations be inspected?

Yes _____ No _____

a. If no, what portion or percentage of the installation of initially sited manufactured homes is inspected? _____

b. If no, what sampling plan is used to provide a reasonable likelihood of detecting problems with any installer and to ensure that overall program quality can be assured with statistical confidence? _____

c. What portion or percentage of the installation of re-sited manufactured homes is inspected? _____

13. Does the state review or track the inspection of manufactured home installations?

Yes _____ No _____

If yes, explain what information the state tracks and how the state uses the information.

14. Does the state have a mechanism for revoking or suspending an installer's license?

Yes _____ No _____

If yes, briefly explain the procedure and when it would be used:

15. Describe the staff and funding utilized in the state's installation program.

Part IV – COMPLIANCE CERTIFICATION

I hereby certify that the state certification information above is true and accurate to the best of my knowledge and belief.

Date: **By:**

(Signature)

(Print or type name and official capacity of signatory)

(Print or type name of state)

[END OF FORM]

[FR Doc. 06–5389 Filed 6–9–06; 1:27 pm]
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To provide for the participation of employees in the judicial branch in the Federal leave transfer program for disasters and emergencies. (May 31, 2006; 120 Stat. 390)

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