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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2001N–0548] (formerly 01N–0548)

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of July 25, 2006 (71 FR 42031). The document amended the voluntary nutrition labeling regulations by updating the names and the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States. The document published with incorrect units of measures for nutrients and an incorrect number in the Final Regulatory Impact Analysis section. This document corrects those errors.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Brandt, Center for Food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1788.

SUPPLEMENTARY INFORMATION: In FR Doc. 06–6436, appearing in the **Federal Register** of Tuesday, July 25, 2006, the following corrections are made:

1. On page 42037, in the third column, in the first full paragraph, in the fourth sentence, ''total carbohydrate (34 g, 11 percent DV, from 21 mg, 7 percent DV)'' is corrected to read ''total carbohydrate (34 g, 11 percent DV, from 21 g, 7 percent DV)''.

2. On page 42037, in Table 1, in the second and fourth columns for Apples, Total Carbohydrate, ''21 mg'' and ''34 mg'' are corrected to read ''21 g'' and ''34 g''.

3. On page 42038, in Table 1, in the fourth column for Tangerine, Sodium, ''0 g'' is corrected to read ''0 mg''.

4. On page 42038, in Table 1, in the second and fourth columns for Mushrooms, Sodium, ''0 g'' and ''15 g'' are corrected to read ''0 mg'' and ''15 mg''.

5. On page 42041, in the third column, in the first full paragraph, in the second sentence, ''one-half of the 48,000 to 68,000 stores'' is corrected to read ''one-half of the 48,000 to 63,000 stores''.

6. On pages 42045 through 42047, in Appendices C and D, the unit of measure for Total Carbohydrate, ''(mg)'' is corrected to read ''(g)''; Appendices C and D to part 101 are corrected to read as follows:

BILLING CODE 4160–01–S

Appendix C to Part 101.--Nutrition Facts for Raw Fruits and Vegetables

Nutrition facts[1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total Fat		Saturated Fat		Trans Fat	Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(g)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Apple, 1 large (242 g/8 oz)	130	0	0	0	0	0	0	0	0	0	0	260	7	34	11	5	20	25	1	2	8	2	2
Avocado, California, 1/5 medium (30 g/1.1 oz)	50	35	4.5	7	0.5	3	0	0	0	0	0	140	4	3	1	1	4	0	1	0	4	0	2
Banana, 1 medium (126 g/4.5 oz)	110	0	0	0	0	0	0	0	0	0	0	450	13	30	10	3	12	19	1	2	15	0	2
Cantaloupe, 1/4 medium (134 g/4.8 oz)	50	0	0	0	0	0	0	0	0	20	1	240	7	12	4	1	4	11	1	120	80	2	2
Grapefruit, 1/2 medium (154 g/5.5 oz)	60	0	0	0	0	0	0	0	0	0	0	160	5	15	5	2	8	11	1	35	100	4	0
Grapes, 3/4 cup (126 g/4.5 oz)	90	0	0	0	0	0	0	0	0	15	1	240	7	23	8	1	4	20	0	0	2	2	0
Honeydew Melon, 1/10 medium melon (134 g/4.8 oz)	50	0	0	0	0	0	0	0	0	30	1	210	6	12	4	1	4	11	1	2	45	2	2
Kiwifruit, 2 medium (148 g/5.3 oz)	90	10	1	2	0	0	0	0	0	0	0	450	13	20	7	4	16	13	1	2	240	4	2
Lemon, 1 medium (58 g/2.1 oz)	15	0	0	0	0	0	0	0	0	0	0	75	2	5	2	2	8	2	0	0	40	2	0
Lime, 1 medium (67 g/2.4 oz)	20	0	0	0	0	0	0	0	0	0	0	75	2	7	2	2	8	0	0	0	35	0	0
Nectarine, 1 medium (140 g/5.0 oz)	60	5	0.5	1	0	0	0	0	0	0	0	250	7	15	5	2	8	11	1	8	15	0	2
Orange, 1 medium (154 g/5.5 oz)	80	0	0	0	0	0	0	0	0	0	0	250	7	19	6	3	12	14	1	2	130	6	0
Peach, 1 medium (147 g/5.3 oz)	60	0	0.5	1	0	0	0	0	0	0	0	230	7	15	5	2	8	13	1	6	15	0	2
Pear, 1 medium (166 g/5.9 oz)	100	0	0	0	0	0	0	0	0	0	0	190	5	26	9	6	24	16	1	0	10	2	0
Pineapple, 2 slices, 3" diameter, 3/4" thick (112 g/4 oz)	50	0	0	0	0	0	0	0	0	10	0	120	3	13	4	1	4	10	1	2	50	2	2
Plums, 2 medium (151 g/5.4 oz)	70	0	0	0	0	0	0	0	0	0	0	230	7	19	6	2	8	16	1	8	10	0	2
Strawberries, 8 medium (147g/5.3 oz)	50	0	0	0	0	0	0	0	0	0	0	170	5	11	4	2	8	8	1	0	160	2	2
Sweet cherries, 21 cherries; 1 cup (140 g/5.0 oz)	100	0	0	0	0	0	0	0	0	0	0	350	10	26	9	1	4	16	1	2	15	2	2
Tangerine, 1 medium (109 g/3.9 oz)	50	0	0	0	0	0	0	0	0	0	0	160	5	13	4	2	8	9	1	6	45	4	0
Watermelon, 1/18 medium melon; 2 cups diced pieces (280 g/10.0 oz)	80	0	0	0	0	0	0	0	0	0	0	270	8	21	7	1	4	20	1	30	25	2	4

Appendix C to Part 101.--Nutrition Facts for Raw Fruits and Vegetables-continued

Nutrition facts[1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total Fat		Saturated Fat		Trans Fat	Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(g)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Asparagus, 5 spears (93 g/3.3 oz)	20	0	0	0	0	0	0	0	0	0	0	230	7	4	1	2	8	2	2	10	15	2	2
Bell pepper, 1 medium (148 g/5.3 oz)	25	0	0	0	0	0	0	0	0	40	2	220	6	6	2	2	8	4	1	4	190	2	4
Broccoli, 1 medium stalk (148 g/5.3 oz)	45	0	0.5	1	0	0	0	0	0	80	3	460	13	8	3	3	12	2	4	6	220	6	6
Carrot, 1 carrot, 7" long, 1 1/4" diameter (78 g/2.8 oz)	30	0	0	0	0	0	0	0	0	60	3	250	7	7	2	2	8	5	1	110	10	2	2
Cauliflower, 1/6 medium head (99 g/3.5 oz)	25	0	0	0	0	0	0	0	0	30	1	270	8	5	2	2	8	2	2	0	100	2	2
Celery, 2 medium stalks (110 g/3.9 oz)	15	0	0	0	0	0	0	0	0	115	5	260	7	4	1	2	8	2	0	10	15	4	2
Cucumber, 1/3 medium (99 g/3.5 oz)	10	0	0	0	0	0	0	0	0	0	0	140	4	2	1	1	4	1	1	4	10	2	2
Green (snap) beans, 3/4 cup cut (83 g/3.0 oz)	20	0	0	0	0	0	0	0	0	0	0	200	6	5	2	3	12	2	1	4	10	4	2
Green cabbage, 1/12 medium head (84 g/3.0 oz)	25	0	0	0	0	0	0	0	0	20	1	190	5	5	2	2	8	3	1	0	70	4	2
Green onion, 1/4 cup chopped (25 g/0.9 oz)	10	0	0	0	0	0	0	0	0	10	0	70	2	2	1	1	4	1	0	2	8	2	2
Iceberg lettuce, 1/6 medium head (89 g/3.2 oz)	10	0	0	0	0	0	0	0	0	10	0	125	4	2	1	1	4	2	1	6	6	2	2
Leaf lettuce, 1 1/2 cups shredded (85 g/3.0 oz)	15	0	0	0	0	0	0	0	0	35	1	170	5	2	1	1	4	1	1	130	6	2	4
Mushrooms, 5 medium (84 g/3.0 oz)	20	0	0	0	0	0	0	0	0	15	0	300	9	3	1	1	4	0	3	0	2	0	2
Onion, 1 medium (148 g/5.3 oz)	45	0	0	0	0	0	0	0	0	5	0	190	5	11	4	3	12	9	1	0	20	4	4
Potato, 1 medium (148 g/5.3 oz)	110	0	0	0	0	0	0	0	0	0	0	620	18	26	9	2	8	1	3	0	45	2	6
Radishes, 7 radishes (85 g/3.0 oz)	10	0	0	0	0	0	0	0	0	55	2	190	5	3	1	1	4	2	0	0	30	2	2
Summer squash, 1/2 medium (98 g/3.5 oz)	20	0	0	0	0	0	0	0	0	0	0	260	7	4	1	2	8	2	1	6	30	2	2
Sweet corn, kernels from 1 medium ear (90 g/3.2 oz)	90	20	2.5	4	0	0	0	0	0	0	0	250	7	18	6	2	8	5	4	2	10	0	2
Sweet Potato, 1 medium, 5" long, 2"diameter (130 g/4.6 oz)	100	0	0	0	0	0	0	0	0	70	3	440	13	23	8	4	16	7	2	120	30	4	4
Tomato, 1 medium (148 g/5.3 oz)	25	0	0	0	0	0	0	0	0	20	1	340	10	5	2	1	4	3	1	20	40	2	4

[1] Raw, edible weight portion. Percent (%) Daily Values are based on a 2,000 calorie diet.

Appendix D to Part 101.--Nutrition Facts for Cooked Fish

Nutrition facts[1] fish (84 g/3 oz)	Calories	Calories from fat	Total Fat		Saturated Fat		Trans Fat	Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(g)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Blue crab	100	10	1	2	0	0	0	95	32	330	14	300	9	0	0	0	0	0	20	0	4	10	4
Catfish	130	60	6	9	2	10	0	50	17	40	2	230	7	0	0	0	0	0	17	0	0	0	0
Clams, about 12 small	110	15	1.5	2	0	0	0	80	27	95	4	470	13	6	2	0	0	0	17	10	0	8	30
Cod	90	5	1	2	0	0	0	50	17	65	3	460	13	0	0	0	0	0	20	0	2	2	2
Flounder/sole	100	15	1.5	2	0	0	0	55	18	100	4	390	11	0	0	0	0	0	19	0	0	2	0
Haddock	100	10	1	2	0	0	0	70	23	85	4	340	10	0	0	0	0	0	21	2	0	2	6
Halibut	120	15	2	3	0	0	0	40	13	60	3	500	14	0	0	0	0	0	23	4	0	2	6
Lobster	80	0	0.5	1	0	0	0	60	20	320	13	300	9	1	0	0	0	0	17	2	0	6	2
Ocean perch	110	20	2	3	0.5	3	0	45	15	95	4	290	8	0	0	0	0	0	21	0	2	10	4
Orange roughy	80	5	1	2	0	0	0	20	7	70	3	340	10	0	0	0	0	0	16	2	0	4	2
Oysters, about 12 medium	100	35	4	6	1	5	0	80	27	300	13	220	6	6	2	0	0	0	10	0	6	6	45
Pollock	90	10	1	2	0	0	0	80	27	110	5	370	11	0	0	0	0	0	20	2	0	0	2
Rainbow trout	140	50	6	9	2	10	0	55	18	35	1	370	11	0	0	0	0	0	20	4	4	8	2
Rockfish	110	15	2	3	0	0	0	40	13	70	3	440	13	0	0	0	0	0	21	4	0	2	2
Salmon, Atlantic/Coho/Sockeye/Chinook	200	90	10	15	2	10	0	70	23	55	2	430	12	0	0	0	0	0	24	4	4	2	2
Salmon, Chum/Pink	130	40	4	6	1	5	0	70	23	65	3	420	12	0	0	0	0	0	22	2	0	2	4
Scallops, about 6 large or 14 small	140	10	1	2	0	0	0	65	22	310	13	430	12	5	2	0	0	0	27	2	0	4	14
Shrimp	100	10	1.5	2	0	0	0	170	57	240	10	220	6	0	0	0	0	0	21	4	4	6	10
Swordfish	120	50	6	9	1.5	8	0	40	13	100	4	310	9	0	0	0	0	0	16	2	2	0	6
Tilapia	110	20	2.5	4	1	5	0	75	25	30	1	360	10	0	0	0	0	0	22	0	2	0	2
Tuna	130	15	1.5	2	0	0	0	50	17	40	2	480	14	0	0	0	0	0	26	2	2	2	4

[1] Cooked, edible weight portion. Percent (%) Daily Values are based on a 2,000 calorie diet.

Dated: August 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–6957 Filed 8–16–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9281]

RIN 1545–BF70

Determination of Interest Expense Deduction of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains revised Income Tax Regulations relating to the determination of the interest expense deduction of foreign corporations and applies to foreign corporations engaged in a trade or business within the United States. This action is necessary to conform the rules to subsequent U.S. Income Tax Treaty agreements and to adopt changes to facilitate improved administrability for taxpayers and the IRS.

DATES: *Effective Date:* These regulations are effective starting the tax year end for which the original tax return due date (including extensions) is after August 17, 2006.

Applicability Date: These regulations are applicable starting the tax year end for which the original tax return due date (including extensions) is after August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Gregory Spring or Paul Epstein, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2030. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning these collections of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 30, 1980, the Treasury Department and the IRS published final regulations TD 7749 [46 FR 16100 (1981–1 CB 390) (see § 601.601(d)(2) of this chapter)] under section 882(c) of the Internal Revenue Code (Code) regarding the determination of a foreign corporation's interest expense allocable to income effectively connected with the conduct of a trade or business within the United States. On March 8, 1996, the Treasury Department and the IRS published final regulations TD 8658 [61 FR 15891 (1996–1 CB 161) (see § 601.601(d)(2) of this chapter)], and new proposed amendments INTL–0054–95 [61 FR 28118 (1996–1 CB 844) (see § 601.601(d)(2) of this chapter)]. The 1996 amendments implemented certain statutory changes enacted in the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), and took account of developments in international financial markets. Comments were received on both the final and proposed 1996 regulations. Since then, two new U.S. income tax treaties have entered into force that follow a different approach for determining the limit on profits attributable to a permanent establishment in a contracting state and for determining interest expense allowed in computing such profits. On July 14, 2005, the Treasury Department and the IRS published Notice 2005–53 (2005–32 IRB 32, see § 601.601(d)(2)), which described those new treaties and announced the intention to update the final § 1.882–5 regulations to take account of changes in the international banking sector and to promote both ease of administration and certainty of application.

These temporary regulations in this document implement Notice 2005–53, make effective one part of the 1996 proposed regulations, make miscellaneous clarifications to the 1996 final regulations, and modify the branch profits tax liability reduction regulations under § 1.884–1(e)(3).

Explanation of Provisions

The following discussion is divided into several parts. Section 1 of the following discussion summarizes Notice 2005–53. Section 2 addresses the coordination of § 1.882–5 with U.S. tax treaties and discusses other modifications made by these temporary regulations to the three-step calculation of interest expense under § 1.882–5. Section 3 addresses changes made to the branch profits tax regulations under section 884. Section 4 then addresses miscellaneous technical modifications made by these temporary regulations that clarify application of the existing final regulations. Section 5 describes the effective date of these regulations.

1. Notice 2005–53

Notice 2005–53 provided guidance regarding the interaction of § 1.882–5 and U.S. income tax treaties and explained that since the recent treaties with the United Kingdom and Japan entered into force, § 1.882–5 no longer provides the exclusive rules for determining the interest expense attributable to the business profits of a U.S. permanent establishment. The Notice also provided guidance and requested comments regarding certain potential modifications to certain elements of the three-step calculation of interest expense under § 1.882–5. More specifically, the Notice requested information regarding a possible increase to the existing 93-percent fixed ratio in Step 2 of the calculation and announced the intention to allow the use of a safe-harbor interest rate for determining excess interest under the ''adjusted U.S.-booked liabilities'' method in Step 3. The Notice also requested comments regarding the effect of intangibles on the Step-1 determination of U.S. assets under the elective fair market value method and the Step-2 determination of U.S. liabilities using the fixed or actual ratio.

2. Modifications to Three-Step Calculation Under § 1.882–5

a. Introduction/Background

Section 1.882–5 generally requires a foreign corporation to use a three-step calculation to determine the amount of interest expense that is allocable under section 882(c) to income effectively connected (or treated as effectively connected) with the foreign corporation's conduct of a trade or business within the United States.

Step 1 determines the total value of a foreign corporation's U.S. assets, which generally are the assets that produce (or would produce) income effectively connected with the foreign corporation's conduct of its U.S. trade or business. The value of the U.S. assets for this purpose is their adjusted basis, or, if the taxpayer makes an election, their fair market value.

Step 2 determines the ''U.S.-connected liabilities'' of a foreign corporation as the product of the foreign corporation's U.S. assets multiplied either by the actual ratio of the foreign corporation's worldwide liabilities to worldwide assets, or by a fixed ratio. In the case of a bank, the fixed ratio is 93 percent. If a taxpayer elects to value its assets at fair market value for purposes of Step 1, then the taxpayer must value worldwide assets at fair market value for purposes of Step 2, as well.

Step 3 determines the allocable amount of interest expense under either the adjusted U.S.-booked liabilities (AUSBL) method or the separate currency pools method. Under the AUSBL method, a foreign bank's interest expense allocable to effectively connected income is determined by comparing ''U.S.-booked liabilities'' with U.S.-connected liabilities and making appropriate adjustments as necessary. For this purpose, U.S.-booked liabilities generally include liabilities that are both entered on books relating to an activity that produces effectively connected income before the close of the day on which the liability is incurred and are directly connected to that activity. In consequence, U.S.-booked liabilities are not limited to liabilities reflected on books within the United States. If a taxpayer's U.S.-booked liabilities exceed its U.S.-connected liabilities, then its U.S-booked interest expense is proportionately disallowed under a ''scale down'' ratio. If a taxpayer's U.S.-connected liabilities exceed its U.S.-booked liabilities, then interest expense in addition to the U.S.-booked interest expense is allocated in an amount equal to the product of the excess U.S.-connected liabilities multiplied by the borrowing rate on U.S.-dollar liabilities that are not U.S.-booked liabilities.

Under the separate currency pools method, a foreign corporation's interest expense allocable to income effectively connected with the conduct of a trade or business within the United States is the sum of the separate interest deductions for each of the currencies in which the foreign corporation has U.S. assets. The separate interest deductions generally are determined using a three-step calculation that multiplies the worldwide borrowing rate by the U.S.-connected liabilities relevant to U.S. assets denominated in each foreign currency.

Elections under § 1.882–5T, as under the 1996 final regulations, generally are binding for a minimum of five years unless specifically provided otherwise. For example, consistent with the binding nature of a domestic corporation's fair market value election under section 861, a fair market value election under § 1.882–5T may be changed only with consent of the Commissioner.

b. Treaty Coordination—Modification of § 1.882–5 Exclusivity Rule

The preamble to the 1996 final regulations states that § 1.882–5 was fully consistent with all of the United States' then-existing treaty obligations, including Business Profits articles, and the 1996 final regulations state that § 1.882–5 provides the exclusive rules for determining the interest expense attributable to the business profits of a U.S. permanent establishment under a U.S. income tax treaty. However, the Treasury Department Technical Explanation to Article 7 of the United States-United Kingdom income tax treaty which entered into force on March 31, 2003, and the Treasury Department Technical Explanation to Article 7 of the United States-Japan income tax treaty which entered into force on March 30, 2004, note that § 1.882–5 may produce an inappropriate result in some cases. As a result, the implementing documentation of these treaties provides that the 1995 Organisation for Economic Co-Operation and Development (OECD) Transfer Pricing Guidelines will apply by analogy for the purpose of determining the business profits attributable to a permanent establishment. Thus, as noted in Notice 2005–53, the exclusivity provision in the 1996 final regulations is no longer accurate.

These temporary regulations modify the exclusivity provision by recognizing that express provision may be made by or pursuant to an income tax treaty or accompanying documents (such as exchange of notes) that alternative principles will apply by analogy to determine the business profits attributable to a permanent establishment. Such treaty provisions may be used to determine the limit on the business profits attributable to a U.S. permanent establishment, but taxpayers remain eligible to use § 1.882–5, as explained in the Treasury Department Technical Explanations to Article 7(3) of the United States-United Kingdom and United States-Japan income tax treaties. The Treasury Department and the IRS believe that these treaties and agreements provide that a taxpayer must apply either the domestic law or the alternative rules expressly provided in the treaty in their entirety, in accordance with the consistency principle articulated in Rev. Rul. 84–17 [(1984–1 CB 308) (see § 601.601(d)(2) of this chapter)] and described in the Treasury Department Technical Explanation to Article 1(2) of the United States-United Kingdom and United States-Japan income tax treaties. The Treasury Department and the IRS are continuing to consider the specific application of this consistency principle including the application of § 1.882–5, the interaction of § 1.882–5 with other U.S. income tax treaties (particularly those being renegotiated in whole or in part), and the application of the branch profits tax under alternative rules for determining interest expense attributable to business profits.

c. Modifications to Step One

Consistency Requirement for Fair Market Value Election

Under the 1996 final regulations, a taxpayer that uses the fair market value method for Step 1 must also use the fair market value method for Step 2. Notice 2005–53 clarified that this consistency rule applies only when the taxpayer has elected to use the actual ratio in Step 2, because assets are not valued when the fixed ratio is used. Accordingly, under the final regulations, electing the fair market value method under Step 1 does not obligate a taxpayer to elect the actual ratio under Step 2.

Notice 2005–53 also stated that the prevalence and significance of intangibles in the banking industry warrants reevaluating the right to elect both the fair market value method in Step 1 and the fixed ratio in Step 2. The Treasury Department and the IRS are concerned that applying the fixed ratio to intangibles when a Step 1 fair market value election is in place would have the effect of treating existing intangibles as highly leveraged assets when in fact such items often are more properly reflected in the taxpayer's equity accounts under U.S. tax principles. Comments were requested.

The single comment received in response to this request stated that distortions could result either by failing to take the value of intangibles into account when revising the fixed ratio for banks or by applying the fixed ratio to directly purchased intangibles that are valued at tax basis.

As further discussed in this section in connection with modifications to Step 2, these temporary regulations adopt a fixed ratio that is believed to represent an approximation of current average banking-industry balance-sheet ratios estimated under U.S. tax principles. Following due consideration of the comment, these temporary regulations require that the fair market value method may be elected in Step 1 only if a taxpayer is eligible to elect and in fact uses the actual ratio in Step 2. The consistency rule continues to require that the fair market value method, once elected, must be used in both Step 1 and Step 2. This consistency rule applies to all foreign corporations that are subject to § 1.882–5.

Conforming-Election Requirement

A taxpayer that has both a valid fair market value method election for Step 1 and a valid fixed ratio method election for Step 2 in effect on the date these temporary regulations are effective must conform those elections to the new rules. Accordingly, such a taxpayer either may maintain the fixed ratio method for Step 2 and elect the adjusted basis method for Step 1, or may maintain the fair market value method for Step 1 and elect the actual ratio method for Step 2. Such conforming elections must be made for the first year these temporary regulations are effective, on either an original timely filed return (including extensions) or an amended return within 180 days after the extended due date. If a conforming election is not made by the extended due date for filing the amended return, the Director of Field Operations may make a binding conforming election on the taxpayer's behalf. Conforming elections are subject to the minimum five-year period applicable to the adjusted basis method, fixed ratio and actual ratio method elections. Elections with respect to Step 1 and Step 2, whether made by the taxpayer (either under the terms of the regulations or pursuant to the Commissioner's grant of consent within what would otherwise be a five-year minimum period) or imposed by the Commissioner, are separate. Thus, for example, the Commissioner may consent to a taxpayer's request to move from the fair market value method to the adjusted basis method for Step 1 without granting consent to move from the actual ratio method to the fixed ratio method for Step 2.

Average Value of Securities Subject to Section 475 or Section 1256

The 1996 proposed regulations provide that financial instruments that are subject to mark-to-market valuation under section 475 or section 1256 must be valued for purposes of § 1.882–5 on each ''determination date'' (as defined) within the taxable year. Taxpayers generally assess funding needs throughout the year, and this rule is intended to reflect such assessments more accurately than a single year-end valuation would do.

These temporary regulations adopt this rule from the 1996 proposed regulations. The rule applies solely to determine the average values of relevant assets for purposes of computing the average valuation of U.S. assets in Step 1 of the formula. The rule does not determine the actual tax basis of an asset for any other purpose. ''Determination dates'' for purposes of the rule are defined as the most frequent regular intervals for which data are reasonably available. These temporary regulations provide that a taxpayer that has elected the actual ratio in Step 2 must also take interim mark-to-market values into account using the most frequently available data but in no event less frequently than actual-ratio taxpayers are required to do.

d. Modifications to Step Two

New Fixed Ratio

The 1996 final regulations revised the fixed ratio for banks downward to 93 percent. Since then, foreign bank taxpayers have commented that 93 percent is not representative of regulated banking industry capital structures. Foreign bank taxpayers also have commented that use of the actual ratio in Step 2 presents the potential for significant tax risk and uncertainty of results, particularly when adjusting their books to conform to U.S. tax principles. It appears that many foreign banks have adopted the 93-percent fixed ratio despite indications that many operate on a smaller equity capital structure.

Notice 2005–53 indicated that the Treasury Department and the IRS were considering increasing the fixed ratio. In order to improve administration by aligning the fixed ratio more closely with an approximation of current average banking industry balance sheet ratios estimated under U.S. tax principles, these temporary regulations revise the fixed ratio for foreign banks upward to 95 percent. The new fixed ratio may be adopted by foreign banks for the first year in which the original tax return due date (including extensions) is after August 17, 2006, or for any subsequent year. The ratio may be adopted, for example, for the 2005 calendar year even if the original return was filed before these regulations were published. Taxpayers that want to try to support any further revision to the fixed ratio would have to submit detailed, specific, compelling evidence to that effect.

Branch Profits Tax Consequences of Fixed-Ratio Election

Use of the new 95-percent fixed ratio in Step 2 conceivably could give rise to branch profits tax consequences. For example, a taxpayer that elects the new fixed ratio and that had been using either the 93-percent fixed ratio or an actual ratio that is less than 95 percent could be viewed under the branch profits tax rules as having experienced a decrease in net equity, thus giving rise to a dividend equivalent amount. One comment received in response to Notice 2005–53 requested that regulations implementing the notice provide special immunity from branch profits tax consequences except to the extent that a taxpayer benefited from the 1996 reduction of the fixed ratio from 95 percent to 93 percent.

Such consequences under the branch profits tax rules should arise only to the extent a taxpayer uses a 95-percent ratio that is substantially higher than the ratio used in the prior year, and the taxpayer's asset base has not increased sufficiently in the ordinary course of business to cause current and accumulated effectively connected earnings and profits to be treated as reinvested. The 1996 final regulations identify the actual ratio as the preferred method, and taxpayers have always been entitled to elect their actual ratio. Accordingly, the Treasury Department and the IRS believe that granting the commenter's request is unnecessary and in some cases could produce an inappropriate windfall. In addition, considerable administrative difficulties would complicate efforts to identify and recapture prior tax benefits that may have resulted from the increase in net equity when the fixed ratio was reduced in the 1996 final regulations and to track the deferred component of the computation through the intervening years up to and including the effective date of the new fixed ratio. Further, a special rule of the type requested is inconsistent with the expectation of reduced effectively connected income through increased interest expense allocations that result from the higher ratio. Finally, any branch profits tax consequences of a new fixed-ratio election may be mitigated by applicable tax treaties and by the expanded availability of the liability-reduction election under section 884, as further

discussed in Section 3. Accordingly, the comment is not adopted.

Elections

Taxpayers that currently have elected the fixed ratio for Step 2 may use the revised 95-percent ratio for the first tax year for which the original tax return due date (including extensions) is after August 17, 2006. Remaining on the fixed ratio does not constitute the election of a new five-year minimum period. For example, a taxpayer that used the 93-percent fixed ratio for three years preceding the publication of these regulations and used the 95-percent fixed ratio for three more years would be entitled to elect the actual ratio method in the following year.

Foreign bank taxpayers that currently use the actual ratio for Step 2 may make a binding five-year election to use the new 95-percent fixed ratio for the first year this amendment is effective, on either an original return or on an amended return filed within 180 days of the extended due date. An amended return election may not be made for any year where the extended due date for a timely filing is after December 31, 2006. If a fixed-ratio election is not made for the first year these regulations are effective, a taxpayer using the actual ratio may make the fixed-ratio election in any subsequent year, but only on a timely filed return.

Eligibility

Under the 1996 final regulations, the 93-percent fixed ratio is available to foreign banks, which are defined for this purpose as banks within the meaning of section 585(a)(2)(B), without regard to the second sentence thereof. This definition excludes foreign banking corporations that are not engaged in a banking business within the United States. This has the effect of excluding a foreign corporation that is engaged in the banking business outside the United States but terminates its U.S. banking licenses and continues to engage in a nonregulated trade or business within the United States.

The Treasury Department and the IRS intend that a taxpayer that meets the requirements of section 581 when considered on a worldwide basis should be eligible to elect the fixed ratio applicable to banks under § 1.882–5 without regard to whether it remains engaged in a banking business within the United States. Therefore, a taxpayer that is regulated as a bank in its home country, takes deposits, and makes loans as a substantial part of its business outside the United States will be eligible to elect the 95-percent fixed ratio.

e. Modifications to Step Three

Excess Interest

A foreign bank that uses the AUSBL method to determine its allocable interest expense may be required to allocate interest expense in addition to its U.S.-booked interest expense if U.S.-connected liabilities exceed U.S.-booked liabilities. The 1996 final regulations provide that the interest rate required to be applied to excess U.S.-connected liabilities is generally the foreign bank's average U.S.-dollar borrowing rate outside the United States. This rule was a change from the 1981 regulations, which had allowed taxpayers to use published rates under certain conditions. Taxpayers have commented informally that using actual non-U.S. dollar borrowing costs in all circumstances imposes significant administrative burdens.

The Treasury Department and the IRS agree that the use of published data rather than the actual borrowing rate requirement would simplify administration of the excess-interest computation both for taxpayers and for the IRS. Notice 2005–53 announced the intention to permit the use of the published 30-day average London Interbank Offering Rate (LIBOR) for tax years beginning after the date the Notice was published.

In response to Notice 2005–53, two comments were received. One comment stated that the proposal to use published 30-day LIBOR rates would make sense if it has been difficult for banks to calculate their actual rate of interest and that consideration might be given to making such a rule available for prior years. The other comment stated that a small sample of available information suggested that the 90-day LIBOR rate rather than the 30-day rate may be more representative of the sampled banks and suggested that the IRS review tax returns with excess interest.

IRS experience in actual cases involving excess interest supports the adoption of a 30-day LIBOR rate rather than a 90-day LIBOR rate. In view of IRS experience and the absence of contrary data, these temporary regulations allow an annual binding election to use a published 30-day average LIBOR rate beginning with the first tax year in which an original tax return is due (including extensions) after August 17, 2006. Taxpayers may continue to use their actual U.S.-dollar borrowing rate in lieu of the 30-day LIBOR rate.

Relevant Excess U.S.-connected Liabilities

These temporary and proposed regulations provide that the determination of the actual U.S.-dollar borrowing rate applicable to excess U.S.-connected liabilities is made with regard only to U.S.-dollar liabilities that are booked outside the United States and that do not constitute U.S.-booked liabilities as defined. The rate applicable to excess U.S.-connected liabilities is intended to reflect the rate applicable to relevant borrowings and book interest expense that has not otherwise been allocated. Because interest with respect to U.S.-booked liabilities is allocable under Step 3 of the AUSBL method, including such interest expense in the determination of the rate applicable to excess U.S.-connected liabilities could distort the calculation.

Elections

The 30-day LIBOR election may be adopted on a year-to-year basis. For the first tax year in which the original tax-return due date (including extensions) is after August 17, 2006 and not later than December 31, 2006, taxpayers may make the 30-day LIBOR election on an original return, or on an amended return within 180 days of the original extended due date. For subsequent years, the election must be made on an original tax return timely filed (including extensions). The election is made by attaching a statement to the return identifying the three-steps of the AUSBL calculation and the published rate used. An election to use a 30-day LIBOR rate is binding for such taxable year and may not be changed on an amended return for any year. Accordingly, a taxpayer is bound by the published rate used on its original return. If a taxpayer does not timely file an income tax return, then the opportunity to make a timely 30-day LIBOR election will be forfeited for the tax year. Consistent with the general rules for untimely elections, in such circumstances, the Director of Field Operations may require a taxpayer to use the actual U.S.-dollar borrowing rate or apply a published 30-day LIBOR rate for the year.

3. Liability Reduction Election Under Branch Profits Tax

In general, the branch profits tax is imposed under section 884(a) in addition to the corporate income tax under section 882 and applies only to amounts that are treated as repatriated from the branch. These amounts are determined by reference to a foreign corporation's effectively connected earnings and profits for a year and accumulated effectively connected earnings and profits, adjusted upward to reflect decreases in U.S. net equity and adjusted downward to reflect increases

in U.S. net equity. Adjustments to net equity generally are made by comparing U.S. net equity at the end of a taxable year to U.S. net equity at the beginning of a taxable year.

The branch profits tax rules impute equity capital to a branch according to a formula that treats a portion of reinvested amounts as having been funded by indebtedness. This generally reduces U.S. net equity and so gives rise to a dividend equivalent amount. Regulations provide that a taxpayer may elect to treat reinvested earnings as equity capital (rather than as debt-funded capital) by reducing U.S. liabilities as of the determination date. The amount of liabilities eligible for reduction under this election is limited to the excess of U.S. liabilities (which is generally based on U.S.-connected liabilities, as defined under § 1.882–5) over U.S.-booked liabilities (as defined under § 1.882–5) as of the determination date. An election to reduce liabilities under § 1.884–1 also reduces the interest deduction available under § 1.882–5.

Taxpayers have expressed uncertainty regarding the policy served by setting U.S.-booked liabilities as a floor for liability reduction and have requested greater latitude to treat earnings as reinvested. For example, taxpayers have noted that the amount of U.S.-booked liabilities is not relevant to the § 1.882–5 allocation under the separate currency pools method. They have noted also that the amount of U.S.-booked liabilities taken into account under the AUSBL method is an average balance for the year that may differ significantly from a year-end balance.

The Treasury Department and the IRS believe that it is desirable to more nearly align the branch profits tax treatment of distributed earnings with the tax treatment of a subsidiary's distributed earnings while retaining integration with the interest allocation rules provided in § 1.882–5. In view of taxpayer comments, these temporary regulations permit a taxpayer to reduce U.S. liabilities to the extent necessary to prevent recognition of a dividend equivalent amount. However, this election may not reduce U.S. liabilities below zero. The other liability-reduction rules of § 1.884–1(e)(3) continue to apply in their entirety. An example in the final regulations is amended in the temporary regulations to reflect the new limitation rule. The new liability reduction election is effective for the first year for which the original tax return due date (including extensions) is after August 17, 2006. For tax years for which the first original tax return due date (including extensions) is not later than December 31, 2006, a liability reduction election may be made on an amended return within 180 days after the original extended due date for filing the original return.

4. Clarifications of 1996 Final Regulations

Questions have arisen regarding the application of certain rules contained in the 1996 final regulations. These temporary regulations clarify the application of the 1996 final regulations with respect to certain direct interest allocations, certain requirements applicable to elections generally under § 1.882–5, the definition of *U.S.-booked liability*, and the treatment of certain currency gain and loss for purposes of § 1.882–5.

a. Direct Interest Allocations

The direct interest allocation rules under § 1.882–5 provide generally that a foreign taxpayer with both a U.S. asset and indebtedness that meet the requirements of both § 1.861–10T(b) and (c) may treat the asset and the indebtedness as an integrated financial transaction and so may allocate interest expense with respect to the indebtedness directly to income from the asset. In general, § 1.861–10T(b) provides rules for certain nonrecourse indebtedness, and § 1.861–10T(c) provides rules for certain integrated financial transactions. Financial institutions may allocate interest directly only to the extent provided by the nonrecourse indebtedness rules. These temporary regulations clarify that a financial institution is not disqualified from direct allocation treatment by satisfying only the rules provided in § 1.861–10T(b) with respect to particular nonrecourse indebtedness transactions. These temporary regulations also clarify that direct allocation is mandatory for eligible taxpayers if the requirements of either § 1.861–10T(b) or (c) are satisfied.

b. General Election Requirements

The 1996 final regulations specify the time, place, and manner for making elections under each step of the formula. These temporary regulations clarify that a taxpayer eligible to change an election as of right after the minimum five-year period may do so only on an original timely filed return. These temporary regulations also clarify that the election procedures prohibit relief under § 301.9100 for future elections as well as the elections in the first year a taxpayer is subject to the rules. These temporary regulations also clarify that after the minimum five-year period, a taxpayer may change an election on a timely filed return for any subsequent year. For example, leaving an election in place in the sixth year after the election was made does not constitute a new election subject to a new 5-year minimum period. The general election provision is updated to provide expressly that the elections to use the fair market value method election and the 30-day LIBOR rate election are subject to their own specific period requirements instead of the five-year minimum period.

c. U.S.-Booked Liabilities

The definition of *U.S.-booked liability* has changed over time. The 1981 final regulations defined U.S.-booked liabilities to include only liabilities shown on the books and records of the U.S. trade or business. This definition excluded assets that produced effectively connected income but were booked and maintained in a foreign branch. The 1996 final regulations modified the definition to include generally, for non banks, liabilities that are recorded reasonably contemporaneously with their acquisition on a set of books that has a direct relationship to an activity that gives rise to effectively connected income. For banks, liabilities generally must be recorded contemporaneously with their acquisition. These rules do not require tracing of specific borrowings to specific effectively connected uses. Whether there is a direct connection between the liability and an activity that produces effectively connected income is determined under all the facts and circumstances.

These temporary regulations amend the definition of U.S.-booked liability and provide an example to clarify that in the case of a bank, the liability must be recorded on a set of books before the end of the day on which it is incurred, and the liability relates to an activity that produces effectively connected income. The reasonably contemporaneous booking rule is retained for non banks and the language clarified to reassert that the liability must relate to an activity that produces effectively connected income.

d. Currency Gain and Loss

A foreign bank's U.S. branch commonly books third-party liabilities denominated in non-dollar currencies and uses the proceeds to make interbranch loans. Because interbranch transactions generally are not recognized for U.S. tax purposes, the third-party liability is treated as unhedged. As noted in the preamble to the 1996 final regulations, foreign currency gain or loss from an unhedged liability remains subject to the rules of

section 988. As a result, the U.S. branch may have currency gain or loss with respect to the third-party borrowing but may not be entitled to recognize currency gain or loss with respect to the offsetting interbranch transaction. In addition, any scaling down of interest expense that might otherwise be required under the AUSBL method does not apply to foreign currency gain or loss.

Some taxpayers have suggested informally that, despite the absence of a general tracing principle in the interest allocation rules, currency gain and loss from such third-party liabilities should be traceable to currency gains and losses with respect to specific interbranch and noneffectively connected assets. The Treasury Department and the IRS solicit comments regarding the allocation, sourcing, and apportionment of currency gain or loss from unhedged third-party borrowings between effectively connected and non-effectively connected income. Comments are specifically requested regarding the viability of a tracing principle for this purpose and the extent to which current booking practices may provide an administrable basis for such rules in accordance with existing authority.

5. Effective Date

The temporary regulations are applicable for the first tax year end for which the original tax return due date (including extensions) is after August 17, 2006. Accordingly, for calendar-year taxpayers, the applicability date is for the tax year ended December 31, 2005. The rules provide an additional 180 days to make certain one-time special elections on an amended return for tax years for which the original tax return due date is not later than December 31, 2006.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Paul S. Epstein and Gregory A. Spring of the Office of Associate Chief Counsel (International).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.882–5 also issued under 26 U.S.C. 882, 26 U.S.C. 864(e), 26 U.S.C. 988(d), and 26 U.S.C. 7701(l). * * *

Section 1.884–1 is also issued under 26 U.S.C. 884. * * *

■ **Par. 2.** Section 1.882–0 is amended by:

■ 1. Revising the entries for § 1.882–5(a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2), (a)(7), (a)(7)(i), (a)(7)(ii), (b)(2)(ii)(A), (b)(3), (c)(2)(iv), (c)(4), (d)(2)(iii)(A), and (d)(5)(ii).

■ 2. Removing the entry for § 1.882–5(b)(2)(iv).

■ 3. Adding entries for § 1.882–5T. The revisions and additions read as follows:

§ 1.882–0 Table of contents.

* * * * *

§ 1.882–5 Determination of interest deduction.

* * * * *

(a)(1) through (a)(2) [Reserved].

* * * * *

(a)(7) through (a)(7)(ii) [Reserved].

* * * * *

(b)(2)(ii)(A) [Reserved].

* * * * *

(b)(3) [Reserved].

* * * * *

(c)(2)(iv) [Reserved].

* * * * *

(c)(4) [Reserved].

* * * * *

(d)(2)(iii)(A) [Reserved].

* * * * *

(d)(5)(ii) [Reserved].

* * * * *

§ 1.882–5T Determination of interest deduction (temporary).

(a) [Reserved].
(1) Overview.
(i) In general.
(ii) Direct allocations.
(A) In general.
(B) Partnership interests
(2) Coordination with tax treaties.
(3) through (6) [Reserved].
(7) Elections under § 1.882–5.
(i) In general.
(ii) Failure to make the proper election.
(iii) Step 2 special election for banks.
(8) through (b)(2)(ii) [Reserved].
(A) In general.
(b)(2)(ii)(B) through (b)(2)(iii)(B) [Reserved].
(3) Computation of total value of U.S. assets.
(i) General rule.
(ii) Adjustment to basis of financial instruments.
(c) through (c)(2)(iii) [Reserved].
(iv) Determination of value of worldwide assets.
(c)(2)(v) through (c)(3) [Reserved].
(4) Elective fixed ratio method of determining U.S. liabilities.
(c)(5) through (d)(2)(iii) [Reserved].
(A) In general.
(B) through (d)(5)(i) [Reserved].
(ii) Interest rate on excess U.S.-connected liabilities.
(A) General rule.
(B) Annual published rate election.
(6) through (f)(2) [Reserved].

■ **Par. 3.** Section 1.882–5 is amended by:

■ 1. Revising paragraphs (a)(1) through (a)(2), (a)(7) through (a)(7)(ii), (b)(2)(ii)(A), (b)(3), (c)(2)(iv), (c)(4), (d)(2)(ii)(A)(*2*), (d)(2)(ii)(A)(*3*), (d)(2)(iii)(A), and (d)(5)(ii).

■ 2. Removing paragraph (b)(2)(iv).

■ 3. Adding paragraph (d)(6) *Example 5.*

The revisions and additions read as follows:

§ 1.882–5 Determination of interest deduction.

* * * * *

(a)(1) through (a)(2) [Reserved]. For further guidance, see entry in § 1.882–5T(a)(1) through (a)(2).

* * * * *

(a)(7) through (a)(7)(ii) [Reserved]. For further guidance, see § 1.882–5T(a)(7) through (a)(7)(ii).

* * * * *

(b)(2)(ii)(A) [Reserved]. For further guidance, see § 1.882–5T(b)(2)(ii)(A).

* * * * *

(b)(3) [Reserved]. For further guidance, see § 1.882–5T(b)(3).

* * * * *

(c)(2)(iv) [Reserved]. For further guidance, see § 1.882–5T(c)(2)(iv).

* * * * *

(c)(4) [Reserved]. For further guidance, see § 1.882–5T(c)(4).

* * * * *

(d)(2)(ii)(A)(*2*) through (*3*) [Reserved]. For further guidance, see § 1.882–5T(d)(2)(ii)(A)(*2*) through (*3*).

* * * * *

(d)(2)(iii)(A) [Reserved]. For further guidance, see § 1.882–5T(d)(2)(iii)(A).

* * * * *

(d)(5)(ii) [Reserved]. For further guidance, see § 1.882–5T(d)(5)(ii).

* * * * *

(d)(6) *Example 5*[Reserved]. For further guidance, see § 1.882–5T(d)(6) *Example 5.*

■ **Par. 4.** Section 1.882–5T is added to read as follows:

§ 1.882–5T Determination of interest deduction (temporary).

(a) [Reserved]. For further guidance, see § 1.882–5(a).

(1) *Overview*—(i) *In general.* The amount of interest expense of a foreign corporation that is allocable under section 882(c) to income which is (or is treated as) effectively connected with the conduct of a trade or business within the United States (ECI) is the sum of the interest allocable by the foreign corporation under the three-step process set forth in paragraphs (b), (c), and (d) of this section and the specially allocated interest expense determined under paragraph (a)(1)(ii) of this section. The provisions of this section provide the exclusive rules for allocating interest expense to the ECI of a foreign corporation under section 882(c). Under the three-step process, the total value of the U.S. assets of a foreign corporation is first determined under paragraph (b) of this section (Step 1). Next, the amount of U.S.-connected liabilities is determined under paragraph (c) of this section (Step 2). Finally, the amount of interest paid or accrued on U.S.-booked liabilities, as determined under paragraph (d)(2) of this section, is adjusted for interest expense attributable to the difference between U.S.-connected liabilities and U.S.-booked liabilities (Step 3). Alternatively, a foreign corporation may elect to determine its interest rate on U.S.-connected liabilities by reference to its U.S. assets, using the separate currency pools method described in paragraph (e) of this section.

(ii) *Direct allocations*—(A) *In general.* A foreign corporation that has a U.S. asset and indebtedness that meet the requirements of § 1.861–10T(b) or (c), as limited by § 1.861–10T(d)(1), shall directly allocate interest expense from such indebtedness to income from such asset in the manner and to the extent provided in § 1.861–10T. For purposes of paragraph (b)(1) or (c)(2) of this section, a foreign corporation that allocates its interest expense under the direct allocation rule of this paragraph (a)(1)(ii)(A) shall reduce the basis of the asset that meets the requirements of § 1.861–10T (b) or (c) by the principal amount of the indebtedness that meets the requirements of § 1.861–10T(b) or (c). The foreign corporation shall also disregard any indebtedness that meets the requirements of § 1.861–10T(b) or (c) in determining the amount of the foreign corporation's liabilities under paragraphs (c)(2) and (d)(2) of this section and shall not take into account any interest expense paid or accrued with respect to such a liability for purposes of paragraph (d) or (e) of this section.

(B) *Partnership interest.* A foreign corporation that is a partner in a partnership that has a U.S. asset and indebtedness that meet the requirements of § 1.861–10T(b) or (c), as limited by § 1.861–10T(d)(1), shall directly allocate its distributive share of interest expense from that indebtedness to its distributive share of income from that asset in the manner and to the extent provided in § 1.861–10T. A foreign corporation that allocates its distributive share of interest expense under the direct allocation rule of this paragraph (a)(1)(ii)(B) shall disregard any partnership indebtedness that meets the requirements of § 1.861–10T(b) or (c) in determining the amount of its distributive share of partnership liabilities for purposes of paragraphs (b)(1), (c)(2)(vi), and (d)(2)(vii) or (e)(1)(ii) of this section, and shall not take into account any partnership interest expense paid or accrued with respect to such a liability for purposes of paragraph (d) or (e) of this section. For purposes of paragraph (b)(1) of this section, a foreign corporation that directly allocates its distributive share of interest expense under this paragraph (a)(1)(ii)(B) shall—

(*1*) Reduce the partnership's basis in such asset by the amount of such indebtedness in allocating its basis in the partnership under § 1.884–1(d)(3)(ii); or

(*2*) Reduce the partnership's income from such asset by the partnership's interest expense from such indebtedness under § 1.884–1(d)(3)(iii).

(2) *Coordination with tax treaties.* Except as expressly provided by or pursuant to a U.S. income tax treaty or accompanying documents (such as an exchange of notes), the provisions of this section provide the exclusive rules for determining the interest expense attributable to the business profits of a permanent establishment under a U.S. income tax treaty.

(3) through (a)(6) [Reserved]. For further guidance, see § 1.882–5(a)(3) through (a)(6).

(7) *Elections under § 1.882–5*—(i) *In general.* A corporation must make each election provided in this section on the corporation's original timely filed Federal income tax return for the first taxable year it is subject to the rules of this section. An amended return does not qualify for this purpose, nor shall the provisions of § 301.9100–1 of this chapter and any guidance promulgated thereunder apply. Except as provided elsewhere in this section, each election under this section, whether an election for the first taxable year or a subsequent change of election, shall be made by the corporation calculating its interest expense deduction in accordance with the methods elected. An elected method (other than the fair market value method under § 1.882–5(b)(2)(ii), or the annual 30-day London Interbank Offered Rate (LIBOR) election in paragraph (d)(5)(ii) of this section) must be used for a minimum period of five years before the taxpayer may elect a different method. To change an election before the end of the requisite five-year period, a taxpayer must obtain the consent of the Commissioner or his delegate. The Commissioner or his delegate will generally consent to a taxpayer's request to change its election only in rare and unusual circumstances. After the five-year minimum period, an elected method may be changed for any subsequent year on the foreign corporation's original timely filed tax return for the first year to which the changed election applies.

(ii) *Failure to make the proper election.* If a taxpayer, for any reason, fails to make an election provided in this section in a timely fashion, the Director of Field Operations may make any or all of the elections provided in this section on behalf of the taxpayer, and such elections shall be binding as if made by the taxpayer.

(iii) *Step 2 special election for banks.* For the first tax year for which an original income tax return is due (including extensions) after August 17, 2006 and not later than December 31, 2006, in which a taxpayer that is a bank as described in § 1.882–5(c)(4) is subject to the requirements of this section, a taxpayer may make a new election to use the fixed ratio on either an original timely filed return, or on an amended return filed within 180 days after the original due date (including extensions). A new fixed ratio election may be made in any subsequent year subject to the timely filing and five-year minimum

period requirements of paragraph (a)(7)(i) of this section. A new fixed ratio election under this paragraph (a)(7)(iii) is subject to the adjusted basis or fair market value conforming election requirements of paragraph (b)(2)(ii)(A)(*2*) of this section and may not be made if a taxpayer elects or maintains a fair market value election for purposes of § 1.882–5(b). Taxpayers that already use the fixed ratio method under an existing election may continue to use the new fixed ratio at the higher percentage without having to make a new five-year election in the first year that the higher percentage is effective.

(8) through (b)(2)(ii) [Reserved]. For further guidance, see § 1.882–5(a)(8) through (b)(2)(ii) .

(A) *In general*—(*1*) *Fair market value conformity requirement.* A taxpayer may elect to value all of its U.S. assets on the basis of fair market value, subject to the requirements of § 1.861–9T(g)(1)(iii), and provided the taxpayer is eligible and uses the actual ratio method under § 1.882–5(c)(2) and the methodology prescribed in § 1.861–9T(h). Once elected, the fair market value must be used by the taxpayer for both Step 1 and Step 2 described in §§ 1.882–5(b) and (c), and must be used in all subsequent taxable years unless the Commissioner or his delegate consents to a change.

(*2*) *Conforming election requirement.* Taxpayers that as of the effective date of this paragraph (b)(2)(ii)(A)(*2*) have elected and currently use both the fair market value method for purposes of § 1.882–5(b) and a fixed ratio for purposes of paragraph (c)(4) of this section must conform either the adjusted basis or fair market value methods in Step 1 and Step 2 of the allocation formula by making an adjusted basis election for § 1.882–5(b) purposes while continuing the fixed ratio for Step 2, or by making an actual ratio election under § 1.882–5(c)(2) while remaining on the fair market value method under § 1.882–5(b). Taxpayers who elect to conform Step 1 and Step 2 of the formula to the adjusted basis method must remain on both methods for the minimum five-year period in accordance with the provisions of paragraph (a)(7) of this section. Taxpayers that elect to conform Step 1 and Step 2 of the formula to the fair market value method must remain on the actual ratio method until the consent of the Commissioner or his delegate is obtained to switch to the adjusted basis method. If consent to use the adjusted basis method in Step 1 is granted in a later year, the taxpayer must remain on the actual ratio method for the minimum five-year period unless consent to use the fixed ratio is independently obtained under the requirements of paragraph (a)(7) of this section. For the first tax year for which an original income tax return is due (including extensions) after August 17, 2006 and not later than December 31, 2006, taxpayers that are required to make a conforming election under this paragraph (b)(2)(ii)(A)(*2*), may do so either on a timely filed original return or on an amended return within 180 days after the original due date (including extensions). If a conforming election is not made within the timeframe provided in this paragraph, the Director of Field Operations or his delegate may make the conforming elections in accordance with the provisions of paragraph (a)(7)(ii) of this section.

(B) through (b)(2)(iii)(B) [Reserved]. For further guidance, see § 1.882–5(b)(2)(ii)(B) through (b)(2)(iii)(B).

(3) *Computation of total value of U.S. assets*—(i) *General rule.* The total value of U.S. assets for the taxable year is the average of the sums of the values (determined under paragraph (b)(2) of this section) of U.S. assets. For each U.S. asset, value shall be computed at the most frequent regular intervals for which data are reasonably available. In no event shall the value of any U.S. asset be computed less frequently than monthly (beginning of taxable year and monthly thereafter) by a large bank (as defined in section 585(c)(2)) or a dealer in securities (within the meaning of section 475) and semi-annually (beginning, middle and end of taxable year) by any other taxpayer.

(ii) *Adjustment to basis of financial instruments.* For purposes of determining the total average value of U.S. assets in this paragraph (b)(3), the value of a security or contract that is marked to market pursuant to section 475 or section 1256 will be determined as if each determination date is the most frequent regular interval for which data are reasonably available that reflects the taxpayer's consistent business practices for reflecting mark-to-market valuations on its books and records.

(c) through (c)(2)(iii) [Reserved]. For further guidance, see § 1.882–5(c) through (c)(2)(iii).

(iv) *Determination of value of worldwide assets.* The value of an asset must be determined consistently from year to year and must be substantially in accordance with U.S. tax principles. To be substantially in accordance with U.S. tax principles, the principles used to determine the value of an asset must not differ from U.S. tax principles to a degree that will materially affect the value of the taxpayer's worldwide assets or the taxpayer's actual ratio. The value of an asset is the adjusted basis of that asset for determining the gain or loss from the sale or other disposition of that asset, adjusted in the same manner as the basis of U.S. assets are adjusted under paragraphs (b)(2) (ii) through (iv) of this section. The rules of § 1.882–5(b)(3)(ii) apply in determining the total value of applicable worldwide assets for the taxable year, except that the minimum number of determination dates are those stated in § 1.882–5(c)(2)(i).

(c)(2)(v) through (c)(3) [Reserved]. For further guidance, see § 1.882–5(c)(2)(v) through (c)(3).

(4) *Elective fixed ratio method of determining U.S. liabilities.* A taxpayer that is a bank as defined in section 585(a)(2)(B) (without regard to the second sentence thereof or whether any such activities are effectively connected with a trade or business within the United States) may elect to use a fixed ratio of 95 percent in lieu of the actual ratio. A taxpayer that is neither a bank nor an insurance company may elect to use a fixed ratio of 50 percent in lieu of the actual ratio.

(5) through (d)(2)(ii)(A)(*1*) [Reserved]. For further guidance, see § 1.882–5(c)(5) through (d)(2)(ii)(A)(*1*).

(*2*) The foreign corporation enters the liability on a set of books reasonably contemporaneous with the time at which the liability is incurred and the liability relates to an activity that produces ECI.

(*3*) The foreign corporation maintains a set of books and records relating to an activity that produces ECI and the Director of Field Operations determines that there is a direct connection or relationship between the liability and that activity. Whether there is a direct connection between the liability and an activity that produces ECI depends on the facts and circumstances of each case.

(d)(2)(ii)(B) through (d)(2)(iii) [Reserved]. For further guidance, see § 1.882–5(d)(2)(ii)(B) through (d)(2)(iii).

(A) *In general.* A liability, whether interest-bearing or non-interest-bearing, is properly reflected on the books of the U.S. trade or business of a foreign corporation that is a bank as described in section 585(a)(2)(B) (without regard to the second sentence thereof) if—

(*1*) The bank enters the liability on a set of books before the close of the day on which the liability is incurred, and the liability relates to an activity that produces ECI; and

(*2*) There is a direct connection or relationship between the liability and that activity. Whether there is a direct connection between the liability and an activity that produces ECI depends on

the facts and circumstances of each case. For example, a liability that is used to fund an interbranch or other asset that produces non-ECI may have a direct connection to an ECI producing activity and may constitute a U.S.-booked liability if both the interbranch or non-ECI activity is the same type of activity in which ECI assets are also reflected on the set of books (for example, lending or money market interbank placements), and such ECI activities are not de minimis. Such U.S. booked liabilities may still be subject to § 1.882–5(d)(2)(v).

(B) through (d)(5)(i) [Reserved]. For further guidance, see § 1.882–5(d)(2)(iii)(B) through (d)(5)(i).

(ii) *Interest rate on excess U.S.-connected liabilities*—(A) *General rule.* The applicable interest rate on excess U.S.-connected liabilities is determined by dividing the total interest expense paid or accrued for the taxable year on U.S.-dollar liabilities that are not U.S.-booked liabilities (as defined in § 1.882–5(d)(2)) and that are shown on the books of the offices or branches of the foreign corporation outside the United States by the average U.S.-dollar denominated liabilities (whether interest-bearing or not) that are not U.S.-booked liabilities and that are shown on the books of the offices or branches of the foreign corporation outside the United States for the taxable year.

(B) *Annual published rate election.* For each taxable year beginning with the first year end for which the original tax return due date (including extensions) is after August 17, 2006, in which a taxpayer is a bank within the meaning of section 585(a)(2)(B) (without regard to the second sentence thereof or whether any such activities are effectively connected with a trade or business within the United States), such taxpayer may elect to compute its excess interest by reference to a published average 30-day London Interbank Offering Rate (LIBOR) for the year. The election may be made for any eligible year by attaching a statement to a timely filed tax return (including extensions) that shows the 3-step components of the taxpayer's interest expense allocation under the adjusted U.S.-booked liabilities method and identifies the provider (for example, International Monetary Fund statistics) of the 30-day LIBOR rate selected. Once selected, the provider and the rate may not be changed by the taxpayer. If a taxpayer that is eligible to make the 30-day LIBOR election either does not file a timely return or files a calculation that allocates interest expense under the scaling ratio in § 1.882–5(d)(4) and it is determined by the Director of Field Operations that the taxpayer's U.S.-connected liabilities exceed its U.S.-booked liabilities, then the Director of Field Operations, and not the taxpayer, may choose whether to determine the taxpayer's excess interest rate under paragraph (d)(5)(ii)(A) or (B) of this section and may select the published 30-day LIBOR rate. For the first taxable year for which an original tax return due date (including extensions) is after August 17, 2006 and not later than December 31, 2006, an eligible taxpayer may make the 30-day LIBOR election one time for the taxable year on an amended return within 180 days after the original due date (including extensions).

(d)(6) through (d)(6) *Example 4* [Reserved]. For further guidance, see § 1.882–5(d)(6) through (d)(6) *Example 4.*

Example 5. U.S. booked liabilities—direct relationship. (i) *Facts.* Bank A, a resident of Country X, maintains a banking office in the U.S. that records transactions on three sets of books for State A, an International Banking Facility (IBF) for its bank regulatory approved international transactions, and a shell branch licensed operation in Country C. Bank A records substantial ECI assets from its bank lending and placement activities and a mix of interbranch and non-ECI producing assets from the same or similar activities on the books of State A branch and on its IBF. Bank A's Country C branch borrows substantially from third parties, as well as from its home office, and lends all of its funding to its State A branch and IBF to fund the mix of ECI, interbranch and non-ECI activities on those two books. The consolidated books of State A branch and IBF indicate that a substantial amount of the total book assets constitute U.S. assets under § 1.882–5(b). Some of the third-party borrowings on the books of the State A branch are used to lend directly to Bank A's home office in Country X. These borrowings reflect the average borrowing rate of the State A branch, IBF and Country C branches as a whole. All third-party borrowings reflected on the books of State A branch, the IBF and Country C branch were recorded on such books before the close of business on the day the liabilities were acquired by Bank A.

(ii) *U.S. booked liabilities.* The facts demonstrate that the separate State A branch, IBF and Country C branch books taken together, constitute a set of books within the meaning of (d)(2)(iii)(A)(*1*) of this section. Such set of books as a whole has a direct relationship to an ECI activity under (d)(2)(iii)(A)(*2*) of this section even though the Country C branch books standing alone would not. The third-party liabilities recorded on the books of Country C constitute U.S. booked liabilities because they were timely recorded and the overall set of books on which they were reflected has a direct relationship to a bank lending and interbank placement ECI producing activity. The third-party liabilities that were recorded on the books of State A branch that were used to lend funds to Bank A's home office also constitute U.S. booked liabilities because the interbranch activity the funds were used for is a lending activity of a type that also gives rise to a substantial amount of ECI that is properly reflected on the same set of books as the interbranch loans. Accordingly, the liabilities are not traced to their specific interbranch use but to the overall activity of bank lending and interbank placements which gives rise to substantial ECI. The facts show that the liabilities were not acquired to increase artificially the interest expense of Bank A's U.S. booked liabilities as a whole under § 1.882–5(d)(2)(v). The third-party liabilities also constitute U.S. booked liabilities for purposes of determining Bank A's branch interest under § 1.884–4(b)(1)(i)(A) regardless of whether Bank A uses the Adjusted U.S. booked liability method, or the Separate Currency Pool method to allocate its interest expense under § 1.882–5(e).

(e) through (f)(2) [Reserved]. For further guidance, see § 1.882–5(e) through (f)(2).

(g) *Effective date.* (1) *This section is applicable for the first tax year in which an original tax return due date (including extensions) is after* August 17, 2006.

(2) The applicability of this section expires on or before August 15, 2009.

■ **Par. 5.** Section 1.884–1 is amended by revising the entries for paragraphs (e)(3)(ii), (e)(3)(iv) and (e)(5) *Example 2.*

§ 1.884–1 Branch profits tax.

* * * * *

(e)(3)(ii) [Reserved]. For further guidance, see entry in § 1.884–1T(e)(3)(ii).

* * * * *

(e)(3)(iv) [Reserved]. For further guidance, see entry in § 1.884–1T(e)(3)(iv).

* * * * *

(e)(5) *Example 2* [Reserved]. For further guidance, see entry in § 1.884–1T(e)(5) Example 2.

* * * * *

■ **Par. 6.** Section 1.884–1T is added to read as follows:

§ 1.884–1T Branch profits tax (temporary).

(a) through (e)(3)(i) [Reserved]. For further guidance, see § 1.884–1(a) through (e)(3)(i).

(ii) *Limitation.* For any taxable year, a foreign corporation may elect to reduce the amount of its liabilities determined under paragraph § 1.884–1(e)(1) of this section by an amount that does not exceed the lesser of the amount of U.S. liabilities as of the determination date, or the amount of U.S. liability reduction needed to reduce a dividend equivalent amount as of the determination date to zero.

(iii) [Reserved]. For further guidance, see § 1.884–1(e)(3)(iii).

(iv) *Method of election.* A foreign corporation that elects the benefits of this paragraph (e)(3) for a taxable year shall state on its return for the taxable year (or on a statement attached to the return) that it has elected to reduce its liabilities for the taxable year under this paragraph (e)(3) and that it has reduced the amount of its U.S.-connected liabilities as provided in § 1.884–1(e)(3)(iii), and shall indicate the amount of such reductions on the return or attachment. An election under this paragraph (e)(3) must be made before the due date (including extensions) for the foreign corporation's income tax return for the taxable year, except that for the first tax year for which the original tax return due date (including extensions) is after August 17, 2006 and not later than December 31, 2006, an election under this paragraph (e)(3) may be made on an amended return within 180 days after the original due date (including extensions).

(v) through (e)(5) *Example 1* [Reserved]. For further guidance, see § 1.884–1(e)(3)(v) through (e)(5) *Example 1*.

Example 2. Election made to reduce liabilities. (i) As of the close of 2007, foreign corporation A, a real estate company, owns U.S. assets with an E&P basis of $1000. A has $800 of liabilities under paragraph (e)(1) of this section. A has accumulated ECEP of $500 and in 2008, A has $60 of ECEP that it intends to retain for future expansion of its U.S. trade or business. A elects under paragraph (e)(3) of this section to reduce its liabilities by $60 from $800 to $740. As a result of the election, assuming A's U.S. assets and U.S. liabilities would otherwise have remained constant, A's U.S. net equity as of the close of 1994 will increase by the amount of the decrease in liabilities ($60) from $200 to $260 and its ECEP will be reduced to zero. Under § 1.884–1(e)(3)(iii), A's interest expense for the taxable year is reduced by the amount of interest attributable to $60 of liabilities and A's excess interest is reduced by the same amount. A's taxable income and ECEP are increased by the amount of the reduction in interest expense attributable to the liabilities, and A may make an election under paragraph (e)(3) of this section to further reduce its liabilities, thus increasing its U.S. net equity and reducing the amount of additional ECEP created for the election.

(ii) In 2009, assuming A again has $60 of ECEP, A may again make the election under paragraph (e)(3) to reduce its liabilities. However, assuming A's U.S. assets and liabilities under paragraph (e)(1) of this section remain constant, A will need to make an election to reduce its liabilities by $120 to reduce to zero its ECEP in 2009 and to continue to retain for expansion (without the payment of the branch profits tax) the $60 of ECEP earned in 2008. Without an election to reduce liabilities, A's dividend equivalent amount for 2009 would be $120 ($60 of ECEP plus the $60 reduction in U.S. net equity from $260 to $200). If A makes the election to reduce liabilities by $120 (from $800 to $680), A's U.S. net equity will increase by $60 (from $260 at the end of the previous year to $320), the amount necessary to reduce its ECEP to $0. However, the reduction of liabilities will itself create additional ECEP subject to section 884 because of the reduction in interest expense attributable to the $120 of liabilities. A can make the election to reduce liabilities by $120 without exceeding the limitation on the election provided in paragraph (e)(3)(ii) of this section because the $120 reduction does not exceed the amount needed to treat the 2009 and 2008 ECEP as reinvested in the net equity of the trade or business within the United States.

(iii) If A terminates its U.S. trade or business in 2009 in accordance with the rules in § 1.884–2T(a), A would not be subject to the branch profits tax on the $60 of ECEP earned in that year. Under paragraph § 1.884–1(e)(3)(v) of this section, however, it would be subject to the branch profits tax on the portion of the $60 of ECEP that it earned in 2008 that became accumulated ECEP because of an election to reduce liabilities.

(f) through (j)(2)(ii) [Reserved]. For further guidance, see § 1.884–1(f) through (j)(2)(ii).

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding an entry for ''§ 1.882–5T'' to the table to read follows:

§ 601.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.882–5T	1545–2030
* * * * *	

Approved: August 2, 2006.

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–13402 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–027]

RIN 1625-AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

DATES: This rule is effective from 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, unless sooner cancelled or extended by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–027 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Erica Govednik, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6138.

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. Publishing an NPRM would be contrary to the public interest since immediate action is

necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

For the same reasons, the Coast Guard finds that, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the certain waters under the West Span in order to safeguard people and property from hazards associated with the presence of construction vessels and equipment in that area. These safety hazards include, but are not limited to, hazards to navigation, collisions with mooring cables, and collisions with work vessels and barges.

Discussion of Rule

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

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

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

Small Entities

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

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because

it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, add temporary § 165.T13–026 to read as follows:

§ 165.T13–026 Safety Zone: New Tacoma Narrows Bridge Construction Project, Construction Barge ''MARMACK 12'' Tacoma Narrows, Gig Harbor, WA.

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

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

(c) *Effective period.* This section is effective from 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, unless sooner cancelled or extended by the Captain of the Port.

Dated: June 15, 2006.

Stephen P. Metruck,

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

[FR Doc. E6–13563 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–026]

RIN 1625–AA00

Safety Zone; New Tacoma Narrows Bridge Construction Project, Bridge Deck Lifting Beams, Tacoma Narrows, Gig Harbor, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

DATES: This rule is effective from 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, unless sooner cancelled or extended by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–014 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Erica Govednik, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6138.

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. Publishing an NPRM would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

For the same reasons, the Coast Guard finds that, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the certain waters under the West Span in order to safeguard people and property from hazards associated with the presence of construction vessels and equipment in that area. These safety hazards include, but are not limited to, hazards to navigation, collisions with mooring cables, and collisions with work vessels and barges.

Discussion of Rule

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

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

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

Small Entities

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

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, add temporary § 165.T13–025 to read as follows:

§ 165.T13–025 Safety Zone: New Tacoma Narrows Bridge Construction Project, Bridge Deck Lifting Beams, Tacoma Narrows, Gig Harbor, WA.

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

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

(c) *Effective period.* This section is effective from 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, unless sooner cancelled or extended by the Captain of the Port.

Dated: June 15, 2006.

Stephen P. Metruck,

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

[FR Doc. E6–13564 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–025]

RIN 1625–AA00

Safety Zone; New Tacoma Narrows Bridge Construction Project, Construction Vessels and Equipment Under and in Immediate Vicinity of West Span, Tacoma Narrows, Gig Harbor, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around construction vessels and mooring lines under the West Span of the Tacoma Narrows Bridge during the deck erection phase of construction. The zone will encompass all waters within a box created by the points: 47–16.44′ N, 122–33.35′ W; 47–16.34′ N, 122–33.04′ W; 47–16.1′ N, 122–33.33′ W; 47–16.21′ N, 122–33.63′ W. This safety zone will be in effect regardless of whether construction vessels are present or not. This zone approximately encompasses all waters from the Gig Harbor shoreline to just east of the west bridge caissons, extending 1500 feet north and south. The Coast Guard is taking this action to safeguard the public from possible collision with the vessels or their mooring lines, chains, or cables. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–025 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Erica Govednik, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6138.

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. Publishing an NPRM would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

For the same reasons, the Coast Guard finds that, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the certain waters under the West Span in order to safeguard people and property from hazards associated with the presence of construction vessels and equipment in that area. These safety hazards include, but are not limited to, hazards to navigation, collisions with mooring cables, and collisions with work vessels and barges.

Discussion of Rule

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

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

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

Small Entities

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

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006, add temporary § 165.T13–024 to read as follows:

§ 165.T13–024 Safety Zone: New Tacoma Narrows Bridge Construction Project, Construction Vessels and Equipment Under and in Immediate Vicinity of West Span, Tacoma Narrows, Gig Harbor, WA.

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, from surface to bottom, within a box bounded by the points: 47–16.44′ N, 122–33.35′ W; 47–16.34′ N, 122–33.04′ W; 47–16.1′ N, 122–33.33′ W; and 47–16.21′ N, 122–33.63′ W [Datum: NAD 1983]. This safety zone will be in effect whether vessels are present or not. This safety zone approximately encompasses all waters from the Gig Harbor shoreline to just east of the west bridge caissons, extending 1500 feet north and south.

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

(c) *Effective period.* This section is effective from 12 a.m. (PST) June 19, 2006 to 12 a.m. (PST) November 16, 2006.

Dated: June 15, 2006.

Stephen P. Metruck,

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

[FR Doc. E6–13569 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–15–P

Proposed Rules

Federal Register

Vol. 71, No. 159

Thursday, August 17, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120509–06]

RIN 1545–BF71

Determination of Interest Expense Deduction of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under sections 882 and 884 relating to the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. These regulations update the 1996 final interest expense allocation rules for foreign corporations and take into account changes in the foreign banking industry. The rule changes are necessary to conform the final regulations more closely to current operating conditions in the foreign banking industry, and to harmonize the deemed earnings repatriation from a foreign corporation's trade or business within the United States, with the manner in which dividends are repatriated from U.S. resident companies to their foreign shareholders. These regulations are expected to simplify compliance burdens for many foreign corporations that allocate interest expense to effectively connected income and provide greater latitude to taxpayers in determining when their effectively connected earnings are treated as remitted. The text of these regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 15, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120509–06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–120509–06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gregory Spring or Paul Epstein, (202) 622–3870, concerning submissions of comments, Richard A. Hurst, *Richard.A.Hurst@irscounsel.treas.gov,* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington DC 20224. Comments on the collection of information should be received by October 16, 2006. Comments are requested specifically concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application or automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in these proposed regulations are in §§ 1.882–5T(d)(5)(ii)(B) and 1.884–1T(e)(3)(iv). This collection of information is required to facilitate administrability of reporting of allocable expense from without the United States. Section 1.882–5T(d)(5)(ii)(B) provides a simplified procedure for taxpayers to calculate an allocable amount of U.S. dollar denominated interest expense booked by foreign banks in foreign locations. The collection of information provides certainty of application and immediate verification in the advance review and resolution of such treatment on examination. Section 1.884–1T(e)(3)(iv) provides the identical collection of information that was promulgated in final regulations in TD 8432 (1992–2 CB 157). The rule provides an election to reduce liabilities for purposes of treating effectively connected earnings and profits as reinvested. It also requires that U.S. connected liabilities be reduced for purposes of determining the allocation of interest expense to effectively connected income. The collection of information facilitates identification and verification of the coordinated treatment of the sections 882 and 884 provisions in accordance with the time, place and manner restrictions for making the election. The collections of information are mandatory. The likely respondents are foreign banks.

Estimated total annual reporting burden: 37.5.

Estimated average annual burden hours per respondent: ½ hour.

Estimated number of respondents: 75.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under sections 882 and 884 relating to the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. The text of those regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. The preamble to those temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Paul S. Epstein and Gregory A. Spring of the Office of Associate Chief Counsel (International).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.882–5 is amended to read as follows:

1. Paragraphs (a)(1) through (a)(2), (a)(7), (a)(7)(i) through (a)(7)(ii), (b)(2)(ii)(A), (b)(3), (c)(2)(iv), (c)(4), (d)(2)(ii)(A)(*2*), (d)(2)(ii)(A)(*3*), (d)(2)(iii)(A), and (d)(5)(ii) are revised.

2. Paragraph (d)(6) Example 5 is added.

The revisions and addition read as follows:

§ 1.882–5 Determination of interest deduction.

(a) * * *

(a)(1) through (a)(2) [The text of this proposed amendment is the same as the text of § 1.882–5T(a)(1) through (a)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

(a)(7) [The text of this proposed amendment is the same as the text of § 1.882–5T(a)(7) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b)(2)(ii)(A) [The text of this proposed amendment is the same as the text of § 1.882–5T(b)(2)(ii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b)(2)(iv) [The text of this proposed amendment is the same as the text of § 1.882–5T(b)(2)(iv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b)(3) [The text of this proposed amendment is the same as the text of § 1.882–5T(b)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c)(2)(iv) [The text of this proposed amendment is the same as the text of § 1.882–5T(c)(2)(iv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c)(4) [The text of this proposed amendment is the same as the text of § 1.882–5T(c)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d)(2)(ii)(A)(*2*) through (*3*) [The text of these proposed amendments are the same as the text of § 1.882–5T(d)(2)(ii)(A)(*2*) through (*3*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d)(2)(iii)(A) [The text of this proposed amendment is the same as the text of § 1.882–5T(d)(2)(iii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d)(5)(ii) [The text of this proposed amendment is the same as the text of § 1.882–5T(d)(5)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d)(6) *Example 5* [The text of this proposed amendment is the same as the text of § 1.882–5T(d)(6) Example 5 published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.884–1 is amended by revising the entries for paragraphs § 1.884–1(e)(3)(ii), (e)(3)(iv) and (e)(5) *Example 2* to read as follows:

§ 1.884–1 Determination of interest deduction

* * * * *

(e)(3)(ii) [The text of this proposed amendment is the same as the text of § 1.884–1T(e)(3)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e)(3)(iv) [The text of this proposed amendment is the same as the text of § 1.884–1T(e)(3)(iv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e)(5) *Example 2* [The text of this proposed amendment is the same as the text of § 1.884–1T(e)(5) *Example 2* published elsewhere in this issue of the **Federal Register**].

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–13409 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–146893–02; REG–115037–00; REG–138603–03]

RIN 1545–BB31, 1545–AY38, 1545–BC52

Treatment of Services Under Section 482 Allocation of Income and Deductions From Intangibles Stewardship Expense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the treatment of controlled services transactions under section 482.

DATES: The public hearing is being held on October 27, 2006, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by October 6, 2006. Written or electronic comments must be received by October 6, 2006.

ADDRESSES: The public hearing is being held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. Submissions may be sent to: CC:PA:LPD:PR (REG–146893–02; REG–115037–00; REG–138603–03), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–146983–02, REG–115037–00, and REG–138603–03).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, the hearing, and/or to be placed on the building access to attend the hearing, Kelly Banks at (202) 622–0392 (not a toll-free number) or by e-mail at *Kelly.d.banks@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–146893–02; REG–115037–00; REG–138603–03) that was published in the **Federal Register** on August 4, 2006 (71 FR 44247).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

A period of 10 minutes is allotted to each person for presenting oral comments. The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restriction, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–13530 Filed 8–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AU42

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2006–07 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2006–07 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 28, 2006.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, or fax comments to (703) 358–2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the April 11, 2006, **Federal Register** (71 FR 18562), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2006–07 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 28 Indian Tribes, based on the input we received in response to the April 11, 2006, proposed rule. As described in that document/proposed rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal hunters, with hunting by nontribal hunters on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service

approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include: (a) Harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, we made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

Despite a very warm winter, the quality of habitat for breeding waterfowl in the U.S. and Canada is slightly better this year than last year. Improvements in Canadian and U.S. prairie habitats were primarily due to average to above-average precipitation, warm spring temperatures, and carry-over effects from the good summer conditions of 2005. Improved habitat conditions were reflected in the higher number of ponds counted in Prairie Canada this year compared to last year. The 2006 estimate of ponds in Prairie Canada was 4.4 ± 0.2 million ponds, a 13% increase from last year's estimate of 3.9 ± 0.2 million ponds and 32% above the 1955–2005 average. The parkland and northern grassland regions of southern Manitoba and Saskatchewan received abundant rain in March and April, which created good to excellent habitat conditions. Higher water tables prevented farm activities in wetland basins and excellent residual nesting cover remained around the potholes. Many of the wetlands flooded beyond their normal basins and into the surrounding uplands. Deeper water in permanent and semi-permanent wetlands, coupled with increased amounts of flooded emergent vegetation and woodland, likely benefited diving ducks and overwater- and cavity-nesting species. However, spring precipitation in the grasslands of southern Saskatchewan and southwestern Manitoba was insufficient to fill seasonal and semi-permanent wetlands or create temporary wetlands for waterfowl, leaving these regions in fair or poor condition. Above-average precipitation in the fall and spring in parts of southern Alberta improved conditions in this historically important pintail breeding region. This region has been dry since 1998, with the exception of 2003. However, central Alberta remained dry.

Habitat conditions in the U.S. prairies were more variable than those in the Canadian prairies. The 2006 pond estimate for the north-central U.S. (1.6 ± 0.1 million) was similar to last year's estimate and the long-term average. The total pond estimate (Prairie Canada and U.S. combined) was 6.1 ± 0.2 million ponds. This was 13 percent greater than last year's estimate of 5.4 ± 0.2 million and 26 percent higher than the long-term average of 4.8 ± 0.1 million ponds. Habitat quality improved minimally in the easternmost regions of North and South Dakota relative to 2005. Small areas of the Eastern Dakotas were in good-to-excellent condition, helped by warm April temperatures and spring rains that advanced vegetation growth by about 2 weeks. However, most of the Drift Prairie, the Missouri Coteau, and the Coteau Slope remained in fair to poor condition due to lack of temporary and seasonal water and the deteriorated condition of semi-permanent basins. Permanent wetlands and dugouts were typically in various stages of recession. The Western Dakotas were generally in fair condition. Most wetland and upland habitats in Montana benefited modestly from average to above-average fall and winter precipitation and improvements in nesting habitat last year. Spring precipitation in Montana during March and April also helped to mitigate several years of drought. A large portion of central Montana was in good condition due to ample late winter and early spring precipitation. Biologists also noted improvements in upland vegetation over previous years. In this central region, most pond basins were

full and stream systems were flowing. However, nesting habitat was largely fair to poor for most of the northern portion of Montana.

Habitat conditions in most northern regions of Canada were improved over last year due to an early ice break-up, warm spring temperatures, and good precipitation levels. In northern Saskatchewan, northern Manitoba, and western Ontario, winter snowfall was sufficient to recharge most beaver ponds and small lakes. Larger lakes and rivers tended to have higher water levels than in recent years. Conditions in the smaller wetlands were ideal. However, in northern Manitoba and northern Saskatchewan, some lakes associated with major rivers were flooded, with some flooded well into the surrounding upland vegetation. The potential for habitat loss due to flooding caused biologists to classify this region as good. In Alberta, water levels improved to the north, except for the Athabasca Delta only, where wetlands, especially seasonal wetlands, generally had low water levels. Most of the Northwest Territories had good water levels. The exceptions were the southern part of the Territory where recent heavy rains in May have caused some flooding of nesting habitat, and a dry swath across the central part of the province. In contrast to most of the survey region and to the past few years, spring did not arrive early in Alaska this year. Overall, a more normal spring phenology occurred throughout most of Alaska and the Yukon Territory, with ice lingering in the following regions: The outer coast of the Yukon Delta, the northern Seward Peninsula, and on the Old Crow Flats. Some flooding occurred on a few major rivers. Overall, good waterfowl production is anticipated this year from the northwestern continental area if temperatures remain seasonable.

Spring-like conditions also arrived early in the East, with an early ice break-up and relatively mild temperatures. Biologists reported that habitat conditions were generally good across most of the survey area. Most regions had a warm, dry winter and a dry start to spring. Extreme southern Ontario was relatively dry during the survey period and habitats were in fair to poor condition. However, precipitation after survey completion improved habitat conditions in this region. Abundant rain in May improved water levels in Maine, the Maritimes, southern Ontario, and Quebec, but caused some flooding in southern Ontario and Quebec and along the coast of Maine, New Brunswick, and Nova Scotia. In Quebec, a very early spring assured good habitat availability. Despite the early spring and the abundance of spring precipitation, a dry winter still left most of the marshes and rivers drier than in past years. Many bogs were noticeably drier than past years or dry entirely in a few cases. Winter precipitation increased to the west and north, resulting in generally good levels in central and northern Ontario. Conditions were good to excellent in central and northern Ontario due to the early spring phenology, generally good water levels, and warm spring temperatures.

Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 5.9 million. This represents a 28 percent increase from 2005 and is 30 percent above the 1955–2005 average. By the criteria developed for the teal season harvest strategy, this population size estimate indicates that a 16-day September teal season is appropriate in 2006.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska spring index for 2006, uncorrected for visibility bias, was 183,000. The photo-corrected 3-year average for 2003–05 was 422,133, which is within the established population-objective range of 349,000–472,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States during 2005–06. About 9,950 hunters participated in these seasons, which was 8 percent higher than the number that participated in the 2004–2005 season. Hunters harvested 18,575 cranes in the U.S. portion of the Central Flyway during the 2005–06 seasons, which was 28 percent higher than the estimated harvest for the previous year. The retrieved harvest of cranes in hunt areas for the Rocky Mountain Population of Sandhill Cranes Arizona, New Mexico, Alaska, Canada, and Mexico combined was estimated at 13,587 during 2005–06. The preliminary estimate for the North American sport harvest, including crippling losses, was 36,674, which is 11 percent higher than the previous year's estimate of 33,182. The long-term (1982–2004) trends indicate that harvests have been increasing at a higher rate than population growth.

The fall 2005 pre-migration survey estimate for the Rocky Mountain Population of Greater sandhill Cranes was 20,865, which was 13 percent higher than the previous year's estimate of 18,510. The 3-year average for 2003–05 is 19,633, which is within established population objectives of 17,000–21,000. Hunting seasons during 2005–06 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a harvest of 702 cranes, an 18 percent increase from the harvest of 594 the year before.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2006 indicate that the number of displaying woodcock in the Eastern Region in 2006 was unchanged from 2005; however, the Central Region experienced an 8 percent decline. There was no significant trend in woodcock heard in either the Eastern or Central Regions during 1996–2006. This represents the third consecutive year since 1992 that the 10-year trend estimate for either region did not indicate a significant decline. There were long-term (1968–2006) declines of 1.9 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection survey data indicate that the 2005 recruitment index for the U.S. portion of the Eastern Region (1.6 immatures per adult female) was 17 percent lower than the 2004 index, and 1 percent lower than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.5 immatures per adult female) was 9 percent higher than the 2004 index, but was 9 percent below the long-term average.

Band-Tailed Pigeons and Doves

Analyses of Breeding Bird Survey (BBS) data over the most recent 10 years and from 1968–2005 showed no significant long-term trend in either time period for the Pacific Coast population of band-tailed pigeons. A rangewide mineral site survey conducted in British Columbia, Washington, Oregon, and California showed an increase in pigeons between 2001 and 2005 of over 10 percent per year. The preliminary 2005 harvest estimate from the Harvest Information Program (HIP) was 13,500. For the Interior band-tailed pigeon population, BBS analyses indicated no trend over either time period. The preliminary 2005 harvest estimate was 2,700.

Analyses of Mourning Dove Call-count Survey data over the most recent 10 years indicated no significant trend for doves heard in either the Eastern or Western Management Units while the Central Unit showed a significant decline. Over the 41-year period, 1966–

2006, all 3 units exhibited significant declines. In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit, while no trends were found in the Central and Western Units. Over 41 years, no trend was found for doves seen in the Eastern and Central Units while a significant decline was indicated for the Western Unit. The preliminary 2005 harvest estimate for the United States was 22,149,900 doves. A banding project is under-way to obtain current information in order to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management.

The two key States with a white-winged dove population are Arizona and Texas. California and New Mexico have much smaller populations. In Arizona, the white-winged dove population showed a significant decline between 1962 and 2005. However, the number of whitewings has been fairly stable since the 1970s, but then showed an apparent decline since 2000. To adjust harvest with population size, the bag limits, season length, and shooting hours have been reduced over the years, most recently in 1988. In recent years, the decline is thought to be largely due to drought conditions in the State, along with declining production of cereal grains. Arizona is currently experiencing the greatest drought in recorded history. In 2006, the Call-count index was 24.7. According to HIP surveys, the 2005 harvest estimate was 110,100.

In Texas, white-winged doves are now found throughout most of the State. A comprehensive dataset for 2006 was not available at this time. However, in 2005, the whitewing population in Texas was estimated to be 2.8 million. The preliminary 2005 HIP harvest estimate was 1,095,100.

In California, BBS data indicates that there has been a significant increase in the population between 1968 and 2005, while no trend was indicated over the most recent 10 years. According to HIP surveys, the preliminary harvest estimate for 2005 was 63,600. The long-term trend for whitewings in New Mexico also shows an increase, while there was no trend indicated over 10 years. In 2005, the estimated harvest was 52,100.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. New surveys were initiated in 2001. No 2006 data were available at the time of this report. However, data from 1987–2005 indicate an apparent slight increase over that time period. The count in 2005 averaged 0.95 birds per stop compared to 0.91 in 2004. The estimated harvest in 2005 from State surveys during the special 4-day whitewing season was about 1,300.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2006–07 hunting season, we received requests from 26 Tribes and Indian organizations and communications from an additional 2 Tribes from whom we expect to receive proposals. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a mid-August 2006 **Federal Register** that will include tribal regulations for the early-hunting season.

The early season generally begins on September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. A final rule will also be published in the **Federal Register** in September 2006 that will include regulations for late-season hunting. The late season begins on or around September 24 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 28, 2006 (71 FR 43008); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 26 Tribes that have submitted proposals that meet the established criteria and an additional 2 Tribes from whom we expect to receive proposals are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2006–07 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2006. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 11, 2006, and close December 25, 2006. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 14, 2006, and run until January 28, 2007. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, three scaup, and two cinnamon teal. The seasons on canvasback and pintail are closed. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 21, 2006, through January 28, 2007. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day.

In 1996, the Tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. Other special tribally set regulations would apply. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2006–07 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members the Tribe proposes outside frameworks for ducks and geese of September 1, 2006, through March 9, 2007. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2006–07 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the Tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The Tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

We have not yet received the Tribe's 2006 proposal. We assume the Tribe will request a duck and merganser season of October 1 to December 12, 2006, with a daily bag limit of six ducks, including no more than five mallards (only two of which may be hens), two redheads, two wood ducks, and three scaup. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15. We assume the pintail and canvasback season would run from October 1 to November 9, 2006, with a daily bag limit of one pintail and one canvasback.

For Canada geese, we assume the Tribe will propose an October 15, 2006, to January 17, 2007, season with a three-bird daily bag limit. For white-fronted geese, we assume the Tribe will propose a September 24 to December 18, 2006, season with a daily bag limit of two. For snow geese, we assume the Tribe will propose a September 24, 2006, to December 29, 2006, season with a daily bag limit of 20.

Similar to the last several years, we assume the Tribe will also request a sandhill crane season from September 10 to October 16, 2006, with a daily bag limit of three. We assume the Tribe will propose a mourning dove season from September 1 to October 30, 2006, with a daily bag limit of 15.

In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

We assume the season and bag limits would be essentially the same as last year and as such, the Tribe would expect similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

The Service proposes to approve the request for special migratory bird hunting regulations for the Crow Creek Sioux Tribe upon receipt of their special migratory bird hunting proposal. We also remind the Tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the Tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the Tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 29, 2006, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2006–07 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 15 to December 3, 2006, season on ducks, mergansers, coots, and moorhens, and a September 1 to December 3, 2006, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 3, 2006, season. The band proposes a September 1 to October 30, 2006, season for mourning doves. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 6 scaup, 4 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

Mourning dove: 30 mourning dove.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2006–07 season, the Tribe requests that the tribal member duck season run from September 22, 2006, through January 21, 2007. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1 through November 30, 2006, and a January 1 through February 8, 2007, season. For white-fronted geese and brant, the Tribe proposes a September 20 through November 30, 2006, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2006, season. The daily bag limit will not exceed five birds. For mourning doves, snipe and rails, the Tribe proposes a September 1 through November 14, 2006, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2005–06 hunting season indicated that approximately 15 tribal hunters harvested an estimated 80 ducks and 35 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2006–07 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although Wisconsin has raised concerns in the past and Michigan now annually raises objections. Minnesota did not concur with the original regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian hunting rights decided in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin.

Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

For 2006, the GLIFWC proposed off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: The Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians in Minnesota; and the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan.

The GLIFWC 2006 proposal is generally similar to last year's regulations, except that it includes significantly increased bag limits for most species in the 1837 and 1842 Treaty Areas, and it proposes to remove the restriction on waterfowl baiting. More specifically, the proposal includes increasing the daily bag limit for ducks, geese, and mergansers in the 1837 and 1842 Treaty Areas to 40, 20, and 10 birds, respectively (from 20, 10, and 5 birds in 2005, respectively), and increasing the daily bag limit for coots and common moorhens to 40 (from 20 in 2005) in the same areas. The proposal also calls for increasing the daily bag limit for snipe, woodcock, and mourning doves to 16, 10, and 30 birds, respectively (from 8, 5, and 15 birds in

2005, respectively), in the 1837 and 1842 Treaty Areas. Lastly, the proposal does reduce the daily bag limit for rails from 25 to 20 birds. Regarding baiting, in an effort to increase hunter participation, the GLIFWC proposal would remove the restrictions on the baiting of waterfowl in the 1837 and 1842 Treaty Areas.

Under the GLIFWC proposed regulations, GLIFWC expects harvest to increase with their proposed more liberal bag limits and removal of the restrictions on baiting in the 1837 and 1842 Treaty Areas. The GLIFWC states that although it is expected these proposed changes will increase harvest, it is difficult to anticipate to what degree that may occur, as harvest will continue to be limited by the number of hunters, their opportunity to hunt, their personal interest in baiting, the strength of the fall flight, weather conditions, and other factors. Given these factors, the Tribe expects harvest would likely remain below 5,000 ducks and 1,000 geese.

The issue of baiting for migratory game bird hunting is highly controversial, highly debated, and complex regulations govern and define what is and what is not allowed when hunting migratory game birds. Baiting, the luring or attracting of migratory game birds to hunters by placing or scattering salt, grain, or other feed was Federally prohibited in 1935 because of its effectiveness in aiding the harvest of migratory birds and is not considered a legitimate component of hunting. Since their establishment, baiting regulations have been a focal point of many regulatory, ethical, and conservation-oriented discussions. Amendments to baiting regulations have occurred relatively infrequently since the 1940s. However, in 1999, the migratory bird baiting regulations were revised to clarify the current regulations and to provide a framework for sound migratory bird habitat management, normal agricultural activities, and other management practices as they relate to lawful migratory game bird hunting (**Federal Register** 64 FR 29799).

Given the fact that tribal waterfowl hunting covered by this proposal would occur on ceded lands that are not in the ownership of the Tribes, we believe the use of bait to take waterfowl would lead to confusion and frustration on the part of the public, hunters, wildlife-management agencies, and law enforcement officials due to the inherent difficulties of different sets of baiting regulations for different areas and groups of hunters. Currently, the baiting regulations differentiate between waterfowl species and other migratory game birds, such as doves and pigeons. Some agricultural management practices that are allowed in connection with dove hunting are not allowed when hunting waterfowl. To create an additional division between tribal members on ceded lands and the rest of the general hunting public would only further complicate the regulations and confuse the public. Moreover, the allowance of baiting for tribal hunting on ceded lands would make those lands and other adjacent areas off-limits to waterfowl hunting.

Recent GLIFWC harvest surveys (1996–98, 2001, and 2004) indicate that tribal off-reservation waterfowl harvest has averaged less than 1,000 ducks and 120 geese annually. In the latest survey year (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Further, in the last five years of harvest surveys, only one hunter reported harvesting 20 ducks in a single day. Analysis of hunter survey data over the period in question (1996–2004) indicates a general downward trend in both harvest and hunter participation.

Given the above information, we believe that the regulations advanced by the GLIFWC for the 2006–07 hunting season are not in the best interests of the Service, the GLIFWC, the general public, or the migratory bird resource. While we acknowledge that tribal harvest and participation has declined in recent years, we are not of the opinion that allowing baiting is the best way to increase Tribal hunter participation. As we stated above, removing the present restrictions on waterfowl baiting would only lead to confusion and frustration on the part of the public, hunters, wildlife-management agencies, and law enforcement officials due to the inherent difficulties of different sets of baiting regulations for different areas and groups of hunters, especially on ceded lands that are not in the ownership of the Tribes.

Furthermore, we do not support the GLIFWC's proposal for significantly increased daily bag limits for most species in the 1837 and 1842 Treaty Areas. Based on the GLIFWC's own harvest data, present daily bag limits do not appear to be a hindrance or limiting factor for Tribal harvest. Until we are presented information otherwise, we cannot support increasing daily bag limits for waterfowl, coots and common moorhens, and mourning doves to the extent GLIFWC has proposed. We do, however, support the proposals for increasing the daily bag limits for mergansers, snipe, and woodcock in the 1837 and 1842 Treaty Areas to bring them more in line with current GLIFWC daily bag limits for ducks and geese. In addition, the Service is willing to meet with the GLIFWC to explore possible ways to increase tribal participation in migratory bird hunting opportunities. Finally, we continue to request that the GLIFWC closely monitor the member bands' harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The proposed 2006–07 waterfowl hunting season regulations for GLIFWC are as follows:

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers

A. Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: 10 mergansers.

B. Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas:

Season Dates: Begin September 1 and end December 1, 2006. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds

A. Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails:

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: 20 sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

C. Common Snipe:

Season Dates: Begin September 15 and end December 1, 2006.

Daily Bag Limit: 16 common snipe in the 1837 and 1842 Treaty Areas; and 8, in the 1836 Treaty Area.

D. Woodcock:

Season Dates: Begin September 5 and end December 1, 2006.

Daily Bag Limit: 10 woodcock in the 1837 and 1842 Treaty Areas; and 5, in the 1836 Treaty Area.

E. Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end October 30, 2006.

Daily Bag Limit: 15.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective sections 10.05 (2)(b) of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2006–07 waterfowl and Canada goose season beginning with the earliest possible opening date in the Pacific Flyway States, October 7, 2006, and a closing date of November 30, 2006. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a daily bay limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2005–06 season, estimated duck harvest was 606, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 1 percent of the total harvest in 2004. The estimated harvest of geese was 12 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2006–07 waterfowl harvest would be around 500–750 ducks and 10–25 geese.

We propose to approve the Tribe's requested 2006–07 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800 acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2006–07 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters, the Tribe requests that the season for ducks begin September 23, 2006, and end January 31, 2007. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 1 to September 17, 2006, and from October 1, 2006, to January 31, 2007. Total number of days would not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession

limits would be the same as those for the State of Washington.

The Tribe reports a 2005–06 nontribal harvest of 80 ducks and 0 geese. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of September 1, 2006, through January 31, 2007. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no 2004–05 tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2006–07 season, the Tribe requests proposed season dates of October 1, 2006, through January 28, 2007. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2006–07 special migratory bird hunting regulations.

(j) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2006–07 season, the Tribe requests a duck season starting on September 23 and ending December 31, 2006, and a goose season to run from September 1 through December 31, 2006. Daily bag limits for both ducks and geese would be 20. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 500–1,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's special migratory bird hunting season.

(k) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2006–07 season, the Little River Band of Ottawa Indians proposes a duck and merganser season from September 15, 2006, through January 20, 2007. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black duck, 3 wood ducks, 3 redheads, 6 mallards (only 3 of which may be a hen), and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe proposes a September 20 through November 30, 2006, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe proposes a September 1, 2006, through February 8, 2007, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe proposes a September 1 to November 14, 2006, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitored harvest through mail surveys. General Conditions were as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2006–07 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve Little River Band of Ottawa Indians special migratory bird hunting seasons.

(l) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2006–07 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to those of other Tribes in the 1836 treaty area. The

tribal member duck, merganser, coot, and gallinule season would run from September 15, 2006, through January 20, 2007. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada geese, the Tribe proposes a September 1, 2006, through February 8, 2007, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 1 through November 30, 2006, season. The daily bag limit for Canada geese would be 5 birds, and for snow geese, brant, and white-fronted geese, 10 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2006, to November 14, 2006, season. The daily bag limit will not exceed five birds. For snipe, mourning doves, and sora rail, the Tribe proposes a September 1 to November 14, 2006, season. The daily bag limit will not exceed 10 birds per species. The possession limit will not exceed two days bag limit for all birds. All other Federal regulations contained in 50 CFR part 20 would apply.

The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2006–07 special migratory bird hunting regulations.

(m) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers-taken lands. For the 2006–07 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2006–07 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the liberal regulatory alternative in the High Plains Management Unit for this season. The Tribe proposes a season from October 14, 2006, through January 19, 2007. For pintail only, the tribe proposes a season from October 21, 2006, through November 28, 2006. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail (only when the season is open), two redheads, two wood ducks, three scaup, and one mottled duck. The canvasback season for nontribal hunters is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 23–24, 2006, with the daily bag and possession limits the same as above.

The Tribe's proposed nontribal member Canada goose season would run from October 28, 2006, through January 31, 2007 (95 day season length), with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 7, 2006, through December 31, 2006, with a daily bag limit of two white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 14, 2006, through January 16, 2007, and February 25 through March 10, 2007. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 30, 2006, through March 10, 2007. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback, two wood ducks, three scaup, and one mottled duck. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 23–24, 2006, with the daily bag and possession limits the same as above.

The Tribe's proposed Canada goose season for tribal members would run from October 14, 2006, through March 10, 2007, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from October 7, 2006, through March 10, 2007, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from October 14, 2006, through March 10, 2007. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2005–06 season, hunters harvested an estimated 760 geese and 96 ducks. In the 2005–06 season, duck harvest species composition was primarily mallard (82 percent), green-winged teal (9 percent), gadwall (2 percent), blue-winged teal (7 percent), and wood duck (1 percent).

Goose harvest species composition in 2005–06 at Mni Sho Sho was approximately 83 percent Canada geese, 15 percent snow geese, and 2 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 96 percent Canada geese and 4 percent snow geese.

The Tribe anticipates a duck harvest similar to those of the previous three years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the Tribe's requested regulations for the Lower Brule Reservation.

(n) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2005–2006 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2006–07 season, we have not yet heard from the Tribe. We assume the Lower Elwha Klallam Tribe will request a duck and coot season from September 15, 2006, to December 30, 2006. The daily bag limit will be seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, we assume the Tribe will request a season from September 15, 2006, to December 30, 2006. The daily bag limit will be four, including no more than three light geese. The season on Aleutian Canada geese will be closed.

For Brant, we assume the Tribe will propose a season from November 1, 2006, to February 15, 2007, with a daily bag limit of two. The possession limit will be twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, we assume the Tribe will request a season from September 15, 2006, to December 30, 2006, with a daily bag limit of 10, 2, and 8, respectively. The possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 100 birds. Tribal reservation police and Tribal Fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the request for special migratory bird hunting regulations for the Lower Elwha Klallam Tribe's upon receipt of their special migratory bird hunting proposal.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 23, 2006, to January 21, 2007. The daily bag limit is seven ducks, including no more than one canvasback, one pintail, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks.

For geese, the Tribe proposes the season open on September 23, 2006, and close January 21, 2007. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese.

For band-tailed pigeons, the Tribe proposes the season open September 1, 2006, and close October 31, 2006. The daily bag limit for band-tailed pigeons is two. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

The Tribe anticipates that harvest under this regulation will be relatively low since fewer than 20 hunters are likely to participate during the proposed season. The Tribe expects fewer than 50 total waterfowl to be harvested during the 2006–07 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited;

(6) The use of dogs is permitted to hunt waterfowl.

We propose to approve the Makah Indian Tribe's requested 2006–07 special migratory bird hunting regulations.

(p) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

For the 2006–07 season, the Navajo Nation requests special migratory bird hunting regulations on the reservation for both tribal and nontribal hunters for the 2006–07 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Tribe requests the earliest opening dates and longest seasons, and the same daily bag and possession limits allowed to Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through September 30, 2006, with daily bag limits of 10 and 5, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe usually anticipates a total harvest of fewer than 500 mourning doves; 20 band-tailed pigeons; 1,000 ducks, coots, and mergansers; and 1,000 Canada geese for the 2006–07 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's special migratory bird season.

(q) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform

regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a May 31, 2006, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 23 through December 3, 2006, with a closed segment of November 18 to 26, 2006. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood duck, one redhead, two pintail, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2006, with a daily bag limit of three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The Tribe will close the season November 18 to 26, 2006. If a quota of 300 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 1 and November 17, 2006, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 12, 2006, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells. Tribal member shooting hours will be from one-half hour before sunrise to one-half hour after sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(r) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2006–07 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2006–07 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under final Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 7, 2006, and a closing date of January 19, 2007. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 7, 2006, and a closing date of January 19, 2007. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 7, 2006, and a closing date of January 19, 2007.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2006–07 hunting season.

(s) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently, and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2005–2006 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe requests a duck and coot season from September 16, 2006, to December 31, 2006. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 16, 2006, to December 31, 2006. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For Brant, the Tribe proposes a season from November 1, 2006, to February 15, 2007, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2006, to December 31, 2006, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer,

tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's requested migratory bird hunting season.

(t) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2006–07 season, the Tribe requests to establish duck and coot seasons that would run from September 1, 2006, through January 15, 2007. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots the daily bag limit is 25. For snipe, the Tribe proposes the season start on September 15, 2006, and end on January 15, 2007. The daily bag limit for snipe is eight. For band-tailed pigeon, the Tribe proposes the season start on September 1, 2006, and end on December 31, 2006. The daily bag limit is five. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 15, 2006, and ending on January 15, 2007. The daily bag limit for geese is four, including no more than two snow geese. The season on Aleutian and Cackling Canada geese is closed. For Brant, the Tribe proposes the season start on September 1, 2006, and end on December 31, 2006. The daily bag limit for brant is two. The possession limit is twice the daily bag limit.

We propose to approve the Squaxin Island Tribe's requested 2006–07 special migratory bird hunting regulations.

(u) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers) and goose seasons run from October 1, 2006, to February 15, 2007. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. For geese, the daily bag limit is six. Possession limits are totals of two daily bag limits.

The Tribe proposes that coot, brant, and snipe seasons run from October 1, 2006, to January 31, 2007. The daily bag limit for coot is 25. The daily bag limit on brant is three. The daily bag limit for snipe is ten. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(v) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian Tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2006–07 season, the Tribe requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribe requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish Tribe requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community proposes a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2007. The Swinomish manage harvest by a report card permit system, and we anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribe's requested 2006–07 special migratory bird hunting regulations.

(w) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

For the 2006–07 season, the Tribe proposes tribal and nontribal hunting regulations for the 2006–07 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the

proposed season for tribal members would be from September 15, 2006, through February 28, 2007. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. For coot, daily bag and possession limits are 25 and 25, respectively, and for snipe 8 and 18, respectively. Nontribal hunters should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 15, 2006, through February 28, 2007. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese annually.

We propose approval of the Tulalip Tribe's request to have a special season. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(x) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2006–07 season, the Tribe requests a duck season starting November 1, 2006, and ending February 8, 2007. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from November 1, 2006, to February 8, 2007, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are seven and five, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2006, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR 20, except shooting hours would be fifteen minutes before official sunrise to fifteen minutes after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the Tribe closely monitor harvest of this special migratory bird hunting season.

(y) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2006–07 season the Tribe proposes a duck season of November 1, 2006, through February 28, 2007. The Tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, six drake mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and four of all other species not listed. The season for harlequins would be closed. The Tribe proposes a teal (green-winged and blue) season of October 16, 2006, through January 29, 2007. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, The Tribe proposes a season between October 16, 2006, and March 1, 2007, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, the Tribe requests a season between September 11 to September 25, 2006, and November 1, 2006, through February 28, 2007, with a daily bag limit of 5 Canada geese during the first period, 3 Canada geese during the second period, and a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 16 and December 1, 2006, with a daily bag limit of three.

The Tribe currently has 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Hunters will be required to register with the Harvest Information Program.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head.

(z) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service

first cooperated to establish special tribal regulations in 1999.

For the 2006–07 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck and merganser season to start September 16 and end December 17, 2006. For ducks, they request a daily bag limit of 10, including no more than 2 mallards and 1 canvasback. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe proposes an early season from September 1 through September 29, 2006, and a late season from September 30, 2006, through December 17, 2006. The early season daily bag limit is eight geese and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 2 through November 30, 2006, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's request to have a special season.

(aa) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2006–07 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2006–07 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 14, 2006, and a closing date of January 28, 2007. The Tribe proposes a separate canvasback season, with an opening date of October 14, 2006, and a closing date of December 10, 2006. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail, one canvasback (when open), and seven mallards (including no more than two hen mallard). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the Tribe is proposing a season from October 14, 2006, through January 28, 2007. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 15, 2006, in Wildlife Management Unit 10 and all areas south of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the Tribe for the 2006–07 season.

(bb) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

On May 17, 2006, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2006–07 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 2006, and running for the maximum amount of days allowed under the final Federal frameworks. The Tribe indicated that if the Service decided to close the canvasback season, the Tribe would close theirs; otherwise, the canvasback season would start October 9, 2006, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback (when open), 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe has requested a dark goose (Canada geese, brant, white-fronts) season starting October 29, 2006, and closing January 31, 2007. The daily bag limit would be three geese (including no more than one white-fronted goose or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 29, 2006, and run for the maximum amount of days allowed under the final Federal frameworks for the State of South Dakota. Daily bag and possession limits would equal the maximum allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2005–06 hunting season, the Tribe reported that 90 nontribal hunters took 400 Canada geese, 75 light geese, and 90 ducks. Forty-five tribal members harvested less than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2006–07 hunting season.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, we desire to obtain the comments and suggestions of the public, other governmental agencies, nongovernmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations, which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a

point early enough in the summer to allow affected State agencies to adjust appropriately their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow the comment period past the date specified in **DATES** is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them in the final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, and were detailed in a March 9, 2006, **Federal Register** notice (71 FR 12216).

Endangered Species Act Consideration

Prior to issuance of the 2006–07 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost-benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990 through 1996, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected economic benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost-benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

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

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under

ADDRESSES or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Surveys and assigned clearance number 1018–0015 (expires February 29, 2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires November 30, 2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

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

Based on the results of migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2006, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal hunters may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2006–07 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken,

hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: August 15, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–7026 Filed 8–15–06; 2:43 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 159

Thursday, August 17, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0102]

Notice of Request for Extension of Approval of an Information Collection; Importation of Unshu Oranges From Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for importation of Unshu oranges from Kyushu Island, Honshu Island, and Shikoku Island, Japan.

DATES: We will consider all comments that we receive on or before October 16, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0102 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0102, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0102.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of Unshu oranges from Japan, contact Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20732–1231; (301) 734–5333. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Unshu Oranges from Japan.

OMB Number: 0579–0173.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

The regulations in ''Subpart—Fruits and Vegetables,'' 7 CFR 319.56 through 319.56–8, prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Under these regulations, Unshu oranges from Kyushu Island, Honshu Island, and Shikoku Island, Japan, are subject to certain conditions before entering the United States to ensure that plant pests are not introduced into the United States. Among other things, the boxes in which the oranges are shipped must be stamped or printed with a statement specifying the States into which the oranges may be imported, and from which they are prohibited removal under a Federal plant quarantine. The Unshu oranges must also be accompanied by a certificate from the Japanese plant protection service certifying that the fruit is apparently free of citrus canker.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0831 hours per response.

Respondents: Full-time, salaried plant health officials of Japan's plant protection service and growers of Unshu oranges.

Estimated annual number of respondents: 23.

Estimated annual number of responses per respondent: 2,896.

Estimated annual number of responses: 66,613.

Estimated total annual burden on respondents: 5,535 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–13574 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0103]

Notice of Request for Extension of Approval of an Information Collection; Cooperative Agricultural Pest Survey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Cooperative Agricultural Pest Survey.

DATES: We will consider all comments that we receive on or before October 16, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0103 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0103.

FOR FURTHER INFORMATION CONTACT: For information regarding the Cooperative Agricultural Pest Survey, contact Mr. Billy Newton, Interim National Survey Coordinator, Emergency and Domestic Programs Staff, PPQ, 4700 River Road, Unit 137, Riverdale, MD 20737; (301) 734–8717. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Agricultural Pest Survey.

OMB Number: 0579–0010.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds that are new to or not widely distributed within the United States. This authority has been delegated to the Administrator, Animal and Plant Health Inspection Service (APHIS).

As part of this mission, the Plant Protection and Quarantine (PPQ) program, APHIS, has joined forces with the States and other agencies to create a program called the Cooperative Agricultural Pest Survey (CAPS). The CAPS program collects and manages data on plant pests, noxious weeds, and biological control agents, which may be used to control plant pests or noxious weeds.

This program allows the States and PPQ to conduct surveys to detect and measure the presence of exotic plant pests and noxious weeds and to enter survey data into a national computer-based system known as the National Agricultural Plant Information System (NAPIS). This, in turn, allows APHIS to obtain a more comprehensive picture of plant pest and noxious weed conditions in the United States as well as detect, in collaboration with the National Plant Diagnostic Network and the U.S. Department of Agriculture's Cooperative State Research, Education, and Extension Service (CSREES), population trends in plant pests or noxious weeds that could indicate an agricultural bioterrorism act.

The information generated by this program is used by States to predict potential plant pest and noxious weed situations in the United States and by Federal interests (e.g., PPQ and CSREES) to promptly detect and respond to the occurrence of new plant pests or noxious weeds and to provide documentation on plant pests and noxious weeds to facilitate and record the location of those incursions that could directly hinder the export of U.S. farm commodities. The system also provides data management support for PPQ programs such as imported fire and gypsy moth.

The CAPS program entails the use of several information collection activities, including a cooperative agreement and a Specimens for Determination Form (PPQ Form 391).

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1092 hours response.

Respondents: State cooperators participating in the Cooperative Agricultural Pest Survey.

Estimated annual number of respondents : 155.

Estimated annual number of responses per respondent: 235.

Estimated annual number of responses: 36,352.

Estimated total annual burden on respondents: 3,969 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–13575 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss and vote on 2006 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on August 22, 2006, 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitterroot National Forest, Supervisor Office, 1801 N. First Street, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: August 10, 2006.

David T. Bull,

Forest Supervisor.

[FR Doc. 06–6974 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fremont and Winema Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fremont and Winema Resource Advisory Committee (RAC) will conduct field meetings on September 7 and September 8, 2006. The purpose of the field meetings is to visit current and future RAC projects, located in Lake and Klamath County, Oregon, in order to review and evaluate project progress and implementation status. These projects have been authorized under the provisions of title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held on September 7 and 8, 2006.

ADDRESSES: The field meeting scheduled for September 7 will begin at 9 a.m. at the Paisley Ranger Station, Paisley, Oregon. The field meeting scheduled for September 8 will begin at 8 a.m. in the large conference room at the Klamath Ranger Station Office located at 2819 Dahlia Street, in Klamath Falls. Send written comments to Fremont and Winema Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 67, Paisley, OR 97636, or electronically to *agowan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Amy Gowan, Designated Federal Official, c/o Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097. Telephone (530) 841–4421.

SUPPLEMENTARY INFORMATION: The agenda and field itinerary includes site visits to RAC projects in the Sycan River watershed on the first day and sites located near the Rocky Point area on the Klamath Ranger District on the second day.

All Fremont and Winema Resource Advisory Committee Meetings are open to the public. There will be a time for public input and comment. Interested citizens are encouraged to attend.

Dated: August 7, 2006.

Amy Gowan,

Designated Federal Official.

[FR Doc. 06–6979 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by October 16, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: 7 CFR Part 1779, Water and Waste Disposal Programs Guaranteed Loans.

OMB Number: 0572–0122.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit

corporations, and Indian tribes for the development of water and waste disposal facilities primarily servicing rural residents. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed loans. The regulations governing the Water and Waste Disposal Guaranteed Loan program are codified at 7 CFR part 1779. The required information, in the form of written documentation and Agency approved forms, is collected from applicants/borrowers, their lenders, and consultants. The collected information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.8 hours per response.

Respondents: Business or other for profit; not-for-profit institutions; State, local or tribal government.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 7.3.

Estimated Total Annual Burden on Respondents: 858 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. Fax: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 06–6971 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by October 16, 2006.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR Part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Joyce McNeil, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Type of Request: Extension of a currently approved collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on Federally assisted new building construction.

7 CFR Part 1792, Subpart C, Seismic Safety of Federally Assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service, hereinafter referred to as agency, through lien accommodations or subordinations approved by the agency.

This subpart implements and explains the provisions of the loan contract utilized by the agency for both electric and telecommunications borrowers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–13547 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the

Rural Utilities Service an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by October 16, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR Part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Emergency and Imminent Community Water Assistance Grants.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Control Number: 0572–0110.

Abstract: This action amends the existing regulation for the Emergency Community Water Assistance Grant (ECWAG) Program to allow grants to be made before an emergency has actually occurred. The ECWAG program was authorized by the Rural Development Act of 1972. The grants are made to public bodies, nonprofit corporations, and Indian tribes for the purpose of improving rural living standards and for other purposes that create safe and affordable drinking water in rural areas or towns with a population not exceeding 10,000 inhabitants.

These grants can be made to construct or improve drinking water facilities serving the most financially needy communities. This revision is undertaken specifically to respond to requirements of Section 6009 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). (2002 Farm Bill)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.6 hours per response.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 400 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis at (202) 720–0812. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–13548 Filed 8–16–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1459

Grant of Authority, Establishment of a Foreign–Trade Zone, Counties of Carroll and Jo–Daviess, Illinois

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 A. . . 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 Jo–Carroll Foreign Trade Zone Board (the Grantee), a joint–county entity of the Counties of Carroll and Jo–Daviess, Illinois, has made application to the Board (FTZ Docket 56–2005, filed 11/9/05), requesting the establishment of a foreign–trade zone at a site in both counties, adjacent to the Davenport, Iowa/Moline and Rock Island, Illinois, Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 69936, 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 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. 271, at the site described in the application, and subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000–acre activation limit.

Signed at Washington, DC, this 31st day of July 2006.

FOREIGN–TRADE ZONES BOARD

Carlos M. Gutierrez,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–13599 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1473

Expansion of Foreign–Trade Zone 176, Rockford, Illinois, Area

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 Greater Rockford Airport Authority, grantee of FTZ 176, submitted an application to the Board for authority to expand FTZ 176 to include a site (Site 7 - 133 acres) at the

Crossroads Commerce Center, Rochelle, adjacent to the Rockford Customs port of entry (FTZ Docket 66–2005; filed 12/21/05);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 326, 1/4/06), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 176 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to a sunset provision that would terminate further authority for the proposed site on September 1, 2011, unless the site is activated under FTZ procedures before that date.

Signed at Washington, DC, this 3rd day of August 2006.

David M. Spooner,

Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–13601 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1472

Approval of Request for Manufacturing Authority Within Foreign–Trade Zone 204, Tri–Cities Area, TN/VA, (Fractional–Horsepower Electric Motors)

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 Tri–Cities Airport Commission, grantee of Foreign–Trade Zone 204, submitted an application to the Board for manufacturing authority (fractional–horsepower electric motors) within FTZ 204 for Electro Motor, LLC (FTZ Docket 42–2005; filed 8/19/2005);

Whereas, notice inviting public comment was given in the **Federal Register** (70 FR 51335–51336, 8/30/2005) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for the manufacture of fractional–horsepower electric motors within Site 5 of FTZ 204, as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of August 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–13600 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on September 7, 2006, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC . The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Report from the composites working group.
3. Report on latest activities from Chemical Weapons Convention.
4. New Business

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 4, 2006, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: August 10, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–6967 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–893

Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Second Amended Final Determination of Sales at Less Than Fair Value

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

SUMMARY: On July 28, 2006, the United States Court of International Trade (''Court'') granted the joint motion for entry of stipulated judgment filed in *Beihai Zhengwu Industry Co. Ltd., et al. v. United States*, Court No. 05–00182, by the plaintiffs Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.; Zhejiang Taizhou Lingyang Aquatic Products Co.; Taizhou Zhonghuan Industrial Co., Ltd.; Zhejiang Daishan Boafa Aquatic Product Co., Ltd.; Zhejiang Evenew Seafood Co., Ltd.; Zhoushan Juntai Foods Co., Ltd; Zhejiang Zhenglong Foodstuffs Co., Ltd.; Zhoushan Haichang Food Co.; Zhoushan Industrial Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Zhoushan Zhenyang

Developing Co., Ltd. (collectively, the eleven respondents) and the defendant, the United States, and dismissed Count 1 of the eleven respondents' complaint. This case arises out of the Departments's *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005) (''Amended Final Determination'').

EFFECTIVE DATE: August 17, 2006

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Christopher D. Riker, 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) 482–1386 or (202) 482–3441, respectively.

SUPPLEMENTARY INFORMATION: On March 29, 2005, the eleven respondents filed a complaint with the Court challenging various aspects of the U.S. Department of Commerce's (''the Department'') *Amended Final Determination*. Count 1 of the complaint challenged the Department's determination that the eleven respondents were part of the China–wide entity. On June 20, 2006, the eleven respondents and the United States filed a joint motion for entry of stipulated judgment with the Court. In the motion, the parties informed the Court that they had reached a settlement as to Count 1 of the eleven respondents' complaint. Pursuant to that agreement and in accordance with the Court's order of July 28, 2006 dismissing Count 1 of the eleven respondents' complaint, the Department hereby publishes in the **Federal Register** a second amended final determination in which the Department is assigning each of the eleven respondents a separate rate of 53.68 percent.

Within five days of publication of this notice, the Department will issue revised cash deposit instructions for the eleven respondents. The Department will instruct U.S. Customs and Border Protection to collect cash deposits on all shipments of the subject merchandise exported by the eleven respondents entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice at the rates detailed below. This deposit rate shall remain in effect until the completion of the next administrative review in which the eleven respondents participate.

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM CHINA

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.	53.68
Zhejiang Taizhou Lingyang Aquatic Products Co.	53.68
Taizhou Zhonghuan Industrial Co., Ltd.	53.68
Zhejiang Daishan Boafa Aquatic Product Co., Ltd.	53.68
Zhejiang Evenew Seafood Co., Ltd.	53.68
Zhoushan Juntai Foods Co., Ltd	53.68
Zhejiang Zhenglong Foodstuffs Co., Ltd.	53.68
Zhoushan Haichang Food Co. Ltd.	53.68
Zhoushan Industrial Co., Ltd.	53.68
Zhoushan Putuo Huafa Sea Products Co., Ltd.	53.68
Zhoushan Zhenyang Developing Co., Ltd.	53.68

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: August 10, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–13595 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–824)

Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On April 12, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain polyethylene terephthalate film, sheet and strip (PET film) from India. *See Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 71 FR 18715 (April 12, 2006) (*Preliminary Results*). This review covers three producers/exporters of PET film, MTZ Polyfilms, Ltd. (MTZ), Jindal Poly Films Limited[1] (Jindal), and Polyplex Corporation Ltd. (Polyplex). The period of review (POR) is July 1, 2004, through June 30, 2005. Based on our analysis of the comments received, we made changes to the preliminary dumping margin calculation for one respondent, Jindal. The final weighted–average dumping margin for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Magd Zalok (MTZ), Drew Jackson (Polyplex), or Kavita Mohan (Jindal), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4162, (202) 482–4406, or (202) 482–3542, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2006, the Department published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment on those results. In response to the Department's invitation to comment on the *Preliminary Results* of this review, Jindal, Polyplex, and MTZ filed case briefs with the Department on May 12, 2006. Petitioners[2] did not submit case briefs. No interested parties submitted rebuttal briefs.

Scope of the Order

For purposes of this order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Analysis of Comments Received

The issues raised in the case briefs are addressed in the Issues and Decision Memorandum to David M. Spooner,

[1] Formerly Jindal Polyester Limited.

[2] The petitioners are Dupont Teijin Films, Mitsubishi Polyester Film Of America, Toray Plastics (America), Inc., and SKC America, Inc.

Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated concurrently herewith (the Decision Memorandum), which is adopted herein, by reference. Attached, as an appendix to this notice, is a list of the comments the Department received from interested parties, all of which are discussed in the Decision Memorandum. The Decision Memorandum is on file in the Central Record Unit, Room B–099 of the Herbert C. Hoover Building, and may be accessed on the Web at http://ia.ita.doc.gov/frn/index.html.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following changes in the comparison and margin calculation programs for Jindal. For a full discussion of these changes, see the Decision Memorandum and the memorandum to the File from Kavita Mohan, International Trade Analyst, concerning ''Analysis Memorandum for Jindal Poly Films Limited,'' dated concurrently with this notice.

Jindal

1. We converted domestic inventory carrying costs into U.S. dollars.
2. We calculated importer–specific assessment rates.

Final Results of Review

As a result of this review, we determine that the following weighted–average dumping margins exist for the period July 1, 2004, through June 30, 2005:

Manufacturer/Exporter	Margin (percent)
Jindal Poly Films Limited	2.32
MTZ Polyfilms, Ltd	0.00
Polyplex Corporation Ltd.	0.01

Assessment

The Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR § 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to an importer to the total entered value of the examined sales to that importer. Where the importer–specific assessment rate is above *de minimis* (*i.e.*, 0.50 percent *ad valorem* or greater), the Department will instruct CBP to assess the importer–specific rate uniformly on the entered value of all entries of subject merchandise by that importer. *See* 19 § CFR 351.106(c)(2). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposits

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). In the instant matter: (1) the cash deposit rate for Jindal will be the rate shown above; (2) since the dumping margins for MTZ and Polyplex are *de minimis*, no cash deposit will be required for MTZ or Polyplex; (3) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (5) if neither the exporter nor the manufacturer is a firm covered by any segment of this proceeding, the cash deposit rate will continue to be 5.71 percent, which is the ''all others'' rate established in the LTFV investigation (24.14 percent), adjusted for the export subsidy rate found in the companion countervailing duty investigation. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review. *See* section 751(a)(2)(C) of the Act.

Notification to Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the concomitant assessment of double antidumping duties. This notice is also the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

The Department is publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 10, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Comment 1: Whether the Department Erroneously Employed Its Practice of Zeroing Negative Margins

Comment 2: Whether the Department Made a Currency Conversion Error in Calculating Jindal's Dumping Margin

Comment 3: Whether the Department Should Continue to Require MTZ to Submit Sales Data From the Window Periods Extending Beyond the Period of Review

Comment 4: Whether it is Necessary to Distinguish Between MTZ's Sales of Prime and Non–prime Merchandise in Calculating Normal Value

Comment 5: Whether the Department Should Adjust Polyplex's U.S. Prices for Duty Drawback

Comment 6: Whether the Department Should Have Compared PET Film Based on the Specific Thickness of the Film Rather Than Thickness Ranges

[FR Doc. E6–13592 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On August 11, 2006, the binational panel issued its decision in the review of the final determination made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico Final Antidumping Duty Administrative Review and Determination not to Revoke, Secretariat File No. USA–MEX–2001–1904–05. The binational panel remanded the determination to the International Trade Administration. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of the final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The Panel concluded that the Department acted in an arbitrary and capricious fashion when it failed to adequately justify its determination that Hylsa did not ship the subject matter goods in commercial quantities during the periods of review in question. We therefore are remanding the matter to the Department for further consideration, in light of the issues raised by the Panel. This is necessary because of our decision that the results of the ninth administrative review cannot be taken into account by the Department in its decision in the fourth review, leaving the commercial quantities determination the sole basis for its refusal to revoke the antidumping order against Hylsa.

For the foregoing reasons the Panel orders that this matter be remanded to the Department of Commerce to reconsider its determination that Hylsa did not ship in commercial quantities consistent with the findings of the Panel.

The Department shall report the results of its remand decision within 45 days of the date of the opinion or not later than September 25, 2006.

Dated: August 14, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–13594 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081106A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for an EFP; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) proposal contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from Atlantic sea scallop open area days-at-sea (DAS), in the event that there is an insufficient number of trips in the scallop access area made available to compensate research authorized under the Sea Scallop Research Set-aside Program (RSA Program).

DATES: Comments on this document must be received on or before September 1, 2006.

ADDRESSES: Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on sea scallop RSA EFP proposal;''
- E-mail: *SC-RSA–006@noaa.gov*, include ''Comments on sea scallop RSA EFP proposal'' in the subject line of the e-mail;
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations currently allocate 0.2 percent of the Southern New England and Georges Bank YT TACs to the Nantucket Lightship Scallop Access Area (NLCA) and Closed Area II Scallop Access Area (CAII), respectively, for research and/or compensation trips conducted under the RSA program. RSA YT bycatch TACs are 644 lb (292 kg) for the NLCA, and 9,127 lb (4,140 kg) for CAII. Seven RSA projects have been recommended by the Regional Administrator for funding through the 2006 RSA Program. Six of these projects will be allocated scallops set-aside from the NLCA and/or CAII, pending approval of the projects through the NOAA Grants Review Process. If one or both of the Access Areas were closed as a result of the attainment of the RSA YT bycatch TAC, a project may become substantially under-funded, and be unable to accomplish the objectives it was intended to achieve.

For the commercial scallop fishery, the YT bycatch TACs are monitored using scallop data provided by vessel operators, and scallop and YT bycatch data provided by at-sea observers. NMFS determines a YT bycatch rate from these data in order to determine the status of the bycatch TAC. The NLCA was closed on July 20, 2006, for the remainder of the 2006 scallop fishing year (FY) to commercial scallop

vessels due to the attainment of the YT bycatch TAC. Since there will be no additional observer bycatch data for the NLCA due to this closure, the final bycatch rate will be applied to NLCA RSA Program compensation trips. For example, with a YT bycatch rate of 0.65 percent (i.e., for every 100 lb (45.4 kg) of scallops caught, 0.65 lb (0.29 kg) of yellowtail are caught), approximately 43 percent, or 100,000 lb (45,359 kg), of the NLCA set-aside scallops can be harvested before the 644 lb (292 kg) YT bycatch TAC is caught. About 57 percent, or 130,000 lb (58,967 kg), of the scallops that have been preliminarily allocated to RSA projects to fund research will not be available.

As of August 8, 2006, the CAII commercial YT bycatch TAC had not been caught. Although the current CAII YT bycatch rate does not indicate the 9,127–lb (4,140 kg) CAII RSA YT bycatch TAC will be caught, the bycatch rate could increase, and CAII could close to RSA compensation trips before all of the set-aside scallops are harvested. There is an additional 130,201 lb (59,058 kg) of scallops available from CAII that were not allocated to any RSA project.

If a project is unable to harvest its allocated scallop compensation due to a YT bycatch TAC closure, project coordinators would have the option to take unused compensation from either CAII, if available, or open scallop areas. Since scallop catch rates are greater in CAII (approximately 2,600 lb (1,179 kg) per day fished) than open areas (approximately 1,880 lb (853 kg) per day fished), it is likely project coordinators will request scallops from CAII before open areas. However, if the CAII YT bycatch rate increases enough to trigger a closure before sufficient scallop compensation can be harvested, researchers would need to harvest scallops from open areas to offset the costs of research. If scallops need to be harvested from open areas, vessels will need an EFP to exempt them from scallop open area DAS as specified at § 648.53(b)(2). Vessels authorized to take an open area trip will have a scallop possession limit consistent with the amount of compensation authorized in the access area(s).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed EFPs. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2006.

James P. Burgess,

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

[FR Doc. E6–13550 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081106B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one or more vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the northeastern United States. The EFP would allow for exemptions from certain Atlantic sea scallop possession and landings restrictions.

DATES: Comments on this document must be received on or before September 1, 2006.

ADDRESSES: Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Coonamessett Farm Inc. EFP Proposal (DA6–187);''
- E-mail: *DA6–187@noaa.gov*, include ''Comments on Coonamessett Farm Inc. EFP Proposal'' in the subject line of the e-mail;
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: This project would attempt to observe, using video surveillance, how sea turtles interact with two scallop dredge designs. The control dredge would be a standard 13–ft (3.9–m) New Bedford-style scallop dredge. The experimental dredge will be a 13–ft (3.9–m) New Bedford-style scallop dredge with modifications to the cutting bar and bale strengthening bars to reduce the likelihood of turtle entrapment in the area between the depressor plate and the cutting bar.

The proposed research activity would occur between August 1, 2006, and July 31, 2007. The exempted vessel(s) would fish in areas open to general category vessels on the continental shelf off the coasts of New Jersey, Maryland, and Virginia. The vessel would be allowed to fish a maximum of 20 days under this EFP, with a total scallop catch not to exceed 8000 lb (3,629 kg) (400 lb/day) / (181 kg/day)). The vessel would conduct approximately 150 tows ranging from 15 - 49 minutes each, at speeds around 4 knots. Previous research in this area has shown bycatch to be limited. It is expected that fish bycatch may consist of 5,000 lb (2,268 kg) of little skate, less than 50 lb (22.7 kg) of monkfish, and approximately 300 lb (136 kg)of flatfish. All marketable scallops, and allowed retention of multispecies and monkfish, would be sold. Vessels will not be allowed to exceed the possession limit for any species other than sea scallops. All other incidental catch would be returned to the sea.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2006.

James P. Burgess,

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

[FR Doc. E6–13551 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2006–0044]

Notice of Roundtable on the World Intellectual Property Organization (WIPO) Treaty on the Protection of the Rights of Broadcasting Organizations

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice announcing public forum.

SUMMARY: The United States Patent and Trademark Office (USPTO) and United States Copyright Office (USCO) announce a public roundtable discussion concerning the work at the World Intellectual Property Organization (WIPO) in the Standing Committee on Copyright and Related Rights (SCCR) on a proposed Treaty On the Protection of the Rights of Broadcasting Organizations. Members of the public are invited to attend the roundtable, or to participate in the roundtable discussion, on the topics outlined in the supplementary information section of this notice.

DATES: The roundtable will be held on Tuesday, September 5, 2006, beginning at 1 p.m. and ending at 3 p.m.

ADDRESSES: The roundtable will be held in the Atrium Conference Room at the USPTO, 600 Dulany Street, Madison West, 10th Floor, Alexandria, VA 22313. Requests for participation as a member of the roundtable are required and should be directed to the USPTO, 600 Dulany Street, Madison West, 10th Floor, Alexandria, VA 22313, marked to the attention of Jill Taylor. You may also submit requests by facsimile at 571–273–0085 or by electronic mail through the Internet to *Jill.Taylor@USPTO.gov*. Requests for participation as a member of the roundtable should indicate the following information:

1. The name of the person desiring to participate;
2. The organization or organizations represented by that person, if any;
3. Contact information (address, telephone, and e-mail);
4. Information on the specific focus or interest of the participant (or his or her organization) and any questions or issues the participant would like to raise.

The deadline for receipt of requests to participate in the roundtable is 5 p.m. on Thursday, August 31, 2006. Attendance is limited to the first 40 respondents.

FOR FURTHER INFORMATION CONTACT: Jill Taylor by telephone at 571–272–8083, by facsimile at 571–273–0085, by electronic mail at *Jill.Taylor@USPTO.gov*, or by mail addressed to the USPTO, 600 Dulany Street, Madison West, 10th Floor, Alexandria, VA 22313, marked to the attention of Jill Taylor.

SUPPLEMENTARY INFORMATION:

Background

For the past eight years and since the first meeting of the Standing Committee on Copyright and Related Rights in November 1998, WIPO has been addressing the topic of updating the protection of the rights of broadcasting organizations. Although broadcasters rights are protected under some existing international agreements, such as under the 1961 Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights, there has been increasing concern that changes in technology and the opening up of much of the world to commercial broadcasting, have made the protection provided in those agreements ineffective to protect broadcast signals against piracy.

At the September 2005 WIPO General Assembly, the decision was taken to hold additional meetings of the SCCR to permit further discussion of the possible treaty and to invite the 2006 WIPO General Assembly to convene a Diplomatic Conference in December 2006 or at an appropriate time in 2007.

WIPO posts various documents from their meetings, such as reports, member state submissions, meeting agendas, and [official] texts prepared by the Chair of the SCCR. The most recent text available from July 31, 2006—''Revised Draft Basic Proposal for The WIPO Treaty on the Protection of Broadcasting Organizations'' can be found at *http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=64712.* On August 1, 2006, the United States made a submission to WIPO addressing the issue of ''netcasting'' which is available at *http://www.uspto.gov/web/offices/dcom/olia/* and will shortly be available on the WIPO Web site.

Throughout this process in WIPO, many points of view have been represented, including those of developed and developing countries, and many non-governmental organizations (NGOs), and numerous industry, creator and content owner groups. The USPTO and USCO have participated in several informal meetings with interested parties such as broadcasters, netcasters, telecom companies, Internet service providers, content industries, creators and other NGOs, in order to obtain views and information relevant to the deliberations in the SCCR on this proposed treaty.

In order to allow further opportunity for interested parties to comment, USPTO and USCO are convening this roundtable to provide another forum for such parties to provide their views of and additional information related to the proposed treaty. In particular, the participants should be prepared to identify and discuss more fully the issues and problems associated with the recent text available from July 31, 2006, the ''Revised Draft Basic Proposal for The WIPO Treaty on the Protection of Broadcasting Organizations.''

Dated: August 15, 2006.

Stephen M. Pinkos,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. E6–13680 Filed 8–16–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0177]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2005 ed.) and Notice of Public Meeting.

SUMMARY: This notice extends the comments period and changes the address to send the comment on the Manual for Courts-Martial; Proposed Amendments notice which was published on August 10, 2006 (71 FR 45780).

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel L. Peter Yob, 703–588–6744.

SUPPLEMENTARY INFORMATION: On August 10, 2006 (71 FR 45780), the Department of Defense published a notice on Proposed Amendments to the Manual for Courts-Martial, United States (205

ed.) and Notice of Public Meeting. The comment period was published with a 30 day limit. The address to forward the comments were not in compliance with the Federal Docket Management System. This notice extends the comment period and identifies where the commentors should forward their comments.

The following changes to the August 10th notice are as follows:

DATES: Comments on the proposed changes must be received no later than October 10, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

All other information remains unchanged.

Dated: August 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–6980 Filed 8–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Notice of advisory board meeting.

SUMMARY: The Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) will hold the fourth public meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR). The VBDR was established at the recommendation of the National Research Council report, entitled ''Review of the Dose Reconstruction Program of the Defense Threat Reduction Agency.'' The report recommended the need to establish an advisory board that will provide suggestions for improvements in dose reconstruction and claim adjudication procedures. The goal of VBDR is to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist VA and DTRA in communicating with the veterans.

Radiation dose reconstruction has been carried out by the Department of Defense under the Nuclear Test Personnel Review (NTPR) program since the 1970s. DTRA is the executive agent for the NTPR program which provides participation data and actual or estimated radiation dose information to veterans and the VA.

Board members were selected to the fulfill the statutory requirements mandated by Congress in Section 601 of Public Law 108–183. The Board was appointed on June 3, 2005, and is comprised of 16 members. Board members were selected to provide expertise in historical dose reconstruction, radiation health matters, risk communications, radiation epidemiology, medicine, quality management, decision analysis and ethics in order to appropriately enable the VBDR to represent and address veterans' concerns.

The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, which sets forth standards for the formation and conduct of government advisory committees.

DATES: Wednesday, November 8, 2006, from 8 a.m.–12 p.m., 1:30–2:30 p.m., and 4–5 p.m. with a public comment session from 2:30–3:30 p.m., and Thursday, November 9, 2006, from 8:30 a.m.–12:30 p.m. and 3:30–3:35 p.m., with a public comment session from 2–3 p.m.

ADDRESSES: Hampton VA Medical Center, 100 Emancipation Drive, Hampton, Virginia 23667.

Agenda: On Wednesday, the meeting will open with an introduction of the Board. The following briefings will be presented: ''Recent Activities and Actions of the Advisory Board on Radiation and Worker Health'' by Dr. Paul Ziemer; ''Activities and Actions of the Veterans' Advisory Committee on Environmental Hazards'' by Dr. Henry Royal; ''Radiation Exposure Compensation Act: Adjudication of Onsite Participant Claims'' by Mrs. Dianne Spellberg; ''How Fears Affect Our Standing of Radiation and Risks'' by Mr. Raymond Johnson; ''An Update on NTPR Dose Reconstruction Program'' by Dr. Paul Blake; and ''An Update on VA Radiation Claims Compensation Program for Veterans'' by Mr. Thomas Pamperin.

On Thursday, the four subcommittees established during the inaugural VBDR session will report on their activities since June 2006. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procedures,'' the ''Subcommittee on VA Claims Adjudication Procedures,'' the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program,'' and the ''Subcommittee on Communication and Outreach.'' The Board will close with a discussion of the Subcommittee reports, future business and meeting dates.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction hotline at 1–866–657–VBDR (8237).

Supplemental Information may be found at *http://vbdr.org.*

Dated: August 11, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6984 Filed 8–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Structure for Transformation will meet in closed session on August 30, 2006, at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting will characterize the degree of changes needed in industry due to the changing nature of DoD and the industrial Base. It will also examine the effectiveness of existing mitigation measures and make recommendations to ensure future competition and innovation throughout all tiers of the defense industrial base. The briefings will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of

Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Describe the defense industry required to cope with the international security environment in the 21st century. Additionally the task force will address the implications for the industrial base of increased DoD acquisition of services, as well as the implications for the financial viability of the defense industrial base as the sector adapts to changing DoD needs for defense-related products and services.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via E-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

Dated: August 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6982 Filed 8–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Structure for Transformation will meet in closed session on October 10, 2006, at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting will characterize the degree of change needed in industry due to the changing nature of DoD and the industrial Base. It will also examine the effectiveness of existing mitigation measures and make recommendations to ensure future competition and innovation throughout all tiers of the defense industrial base. The briefings will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Describe the defense industry required to cope with the international security environment in the 21st century. Additionally the task force will address the implications for the industrial base of increased DoD acquisition of services, as well as the implications for the financial viability of the defense industrial base as the sector adapts to changing DoD needs for defense-related products and services.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via Email at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

Dated: August 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6983 Filed 8–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Thursday, September 21, 2006, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Rich Martel, TRICARE Management Activity, Pharmaceutical Operations Directorate, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone 703–681–2890, ext. 6718, fax 703–681–1940, or Email at *baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the Uniform Formulary as reflected in the recommendations of the DOD Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in August 2006. The P&T Committee information and subject matter concerning drug classes reviewed for that meeting are available at *http://pec.ha.osd.mil.* Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to *baprequests@tma.osd.mil* no later than September 14, 2006. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour will be reserved for public comments, and speaking times will be assigned only to the first twelve citizens to sign up at the meeting, on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes.

Dated: August 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–6981 Filed 8–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 27, 2006, 2 p.m.–8:30 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston.
Establishment of a Quorum.
Welcome and Introductions by Chair, J.D. Campbell.
Approval of Agenda.
Approval of Minutes of July 26, 2006 Board Meeting.
2:15 p.m. Board Business/Reports.
Election of Chair and Vice-Chair for Fiscal 2007–2008, Board Members.
Old Business, Chair, J.D. Campbell.
Report from Chair, J.D. Campbell.
Report from Department of Energy (DOE), Christina Houston.
Report from Executive Director, Menice Santistevan.
Other Issues, Board Members.
New Business.
2:45 p.m. Committee Business/Reports.
A. Environmental Monitoring, Surveillance and Remediation Committee, Chris Timm.
B. Waste Management Committee, Donald Jordan.
C. Ad Hoc Committee on Bylaws and Administrative Procedures, Presentation of Proposed Amendments for First Reading, Donald Jordan.
Reports from Liaisons.
U.S. Environmental Protection Agency (EPA)—Rich Mayer.
DOE—George Rael.
Los Alamos National Security (LANS)—Andy Phelps.
New Mexico Environment Department (NMED)—James Bearzi.
3:45 p.m. Break.
4 p.m. DOE Los Alamos Site Office (DOE/LASO) and LANS/Los Alamos National Laboratory (LANL) Business, Ed Wilmot or George Rael.
5 p.m. Dinner Break.
6 p.m. Public Comment.
6:15 p.m. Consideration of Recommendation.
6:30 p.m. Presentation on Environmental Restoration—LANL/DOE Staff.
7:30 p.m. Comments from Liaisons—DOE/LASO, LANL, EPA, NMED.
8 p.m. Round Robin on Board Meeting and Presentations, Board Members.
8:15 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., J.D. Campbell.
8:30 p.m. Adjourn, Christina Houston.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Santistevan at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org*.

Issued at Washington, DC on August 10, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E6–13571 Filed 8–16–06; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–48–005]

Central Kentucky Transmission Company; Notice of Compliance Filing

August 10, 2006.

Take notice that on August 3, 2006, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 6, with a proposed effective date of September 1, 2006.

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 online 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. E6–13540 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–164–007]

Equitrans, L.P.; Notice of Compliance Filing

August 10, 2006.

Take notice that on August 3, 2006, Equitrans L.P. (Equitrans) filed an amendment in Docket No. RP05–164–007 to make corrections and clarifications to certain tariff sheets. Second Substitute First Revised Sheet No. 504 was submitted with the correct pagination.

Any person desiring to protest this filing must file in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all 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 online 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. E6–13534 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–428–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Application

August 10, 2006.

Take notice that on August 1, 2006, Panhandle Eastern Pipe Line Company, LP (Panhandle), P.O. Box 4967, Houston Texas 77210–4967, filed in Docket No. CP06–428–000, an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to abandon and replace certain pipeline segments on Panhandle's existing Tuscola Line in Douglas County, Illinois; Montezuma Line in Parke County, Indiana; and on its Zionsville Line in Marion, Boone and Hamilton Counties, Indiana; to install ancillary facilities on its pipeline system, and to relocate tap facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, Panhandle Eastern Pipe Line Company, LP, 5444 Westheimer Road, Houston, Texas 77056, Telephone: 713–989–7000.

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, before the comment date of this notice, 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on August 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13535 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–55–002]

PJM Interconnection, L.L.C.; Notice of Filing

August 10, 2006.

Take notice that on August 3, 2006, PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM FERC Electric Tariff, Sixth Revised Volume No. 1 and the PJM Operating Agreement, Third Revised Rate Schedule No. 24.

PJM states that it has served a copy of the filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically, and requests waiver of the requirement to post by mailing paper copies.

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 August 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13536 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 10, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–70–000.

Applicants: White Creek Wind I, LLC.

Description: White Creek Wind I, LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 08/04/2006.

Accession Number: 20060810–0056.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–2119–005; ER06–1189–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a Motion for Leave to Answer and Answer to the Protests of Coral Power.

Filed Date: 08/04/2006.

Accession Number: 20060804–5082.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Docket Numbers: ER04–776–007.

Applicants: PJM Interconnection, LLC.

Description: Public Utilities Commission of Ohio submits a State Certification in which they make certain representations and warranties regarding its legal obligations and those of its authorized representatives.

Filed Date: 08/04/2006.

Accession Number: 20060807–0108.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Docket Numbers: ER05–1050–003.

Applicants: AmerGen Energy Company LLC.

Description: Refund Report of AmerGen Energy Company in Compliance with Commission's June 28, 2006 Order under ER05–1050.

Filed Date: 08/04/2006.

Accession Number: 20060804–5063.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Docket Numbers: ER06–95–001.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Company submits a compliance electric refund report pursuant to the Commission's 6/9/06 Order.

Filed Date: 08/09/2006.

Accession Number: 20060809–5040.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 30, 2006.

Docket Numbers: ER05–1050–001.

Applicants: MinnDakota Wind LLC.

Description: MinnDakota Wind LLC submits its response in Compliance with Commission's July 5, 2006 Order.

Filed Date: 08/04/2006.

Accession Number: 20060810–0079.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Docket Numbers: ER06–1051–003.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator Inc. submits the supplemental information requested in FERC's 7/5/06 deficiency letter.

Filed Date: 08/04/2006.

Accession Number: 20060808–0147.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Docket Numbers: ER06–1308–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits its errata to their 7/31/06 filing.

Filed Date: 08/08/2006.

Accession Number: 20060810–0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 29, 2006.

Docket Numbers: ER06–1320–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits its proposed increase in the rates charges to certain of its wholesale customers.

Filed Date: 08/01/2006.

Accession Number: 20060803–0074.

Comment Date: 5 p.m. Eastern Time on Friday, September 01, 2006.

Docket Numbers: ER06–1325–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Company submits a request of approval for proposed rate changes for wholesale and retail electric transmission rates etc, effective 10/1/06.

Filed Date: 08/01/2006.

Accession Number: 20060810–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1346–000.

Applicants: White Creek Wind I, LLC.

Description: White Creek Wind I, LLC submits its application for order accepting Market-Based Rate Tariff, granting authorizations and blanket authority and waiving certain requirements, FERC Electric Tariff, Original Volume 1.

Filed Date: 08/04/2006.

Accession Number: 20060810–0054.

Comment Date: 5 p.m. Eastern Time on Friday, August 25, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06–48–000.

Applicants: Legg Mason, Inc.

Description: Legg Mason Inc. submits additional information to its 5/5/2006 pursuant to the Commission's Order issued 6/30/06.

Filed Date: 08/01/2006.

Accession Number: 20060802–0117.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that

document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive E-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERCOnline 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. E6–13541 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12658–000]

E.ON U.S. Hydro 1 LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

August 10, 2006.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12658–000.

c. *Dated Filed:* June 12, 2006.

d. *Submitted By:* E.ON U.S. Hydro 1 LLC.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* The project would be located on the Ohio River in Bracken County, Kentucky. The existing dam is owned and operated by the U.S. Army Corps of Engineers (Corps). The project would occupy United States lands administered by the Corps.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Michael S. Beer, E.ON U.S. Hydro 1 LLC, 220 West Main Street, Louisville, KY 40202, (502) 627–3547; e-mail—*mike.beer@eon-us.com.*

i. *FERC Contact:* Peter Leitzke at (202) 502–6059; or e-mail at *peter.leitzke@ferc.gov.*

j. E.ON U.S. Hydro 1 LLC filed its request to use the Traditional Licensing Process on June 12, 2006. With this notice, the Director of the Office of Energy Projects approves E.ON U.S. Hydro 1 LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Kentucky State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating E.ON U.S. Hydro 1 LLC as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and Section 106 of the National Historic Preservation Act.

m. E.ON U.S. Hydro 1 LLC filed a Pre-Application Document (PAD) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13537 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12667–001]

City of Hamilton, OH; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

August 10, 2006.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12667–001.

c. *Dated Filed:* June 12, 2006.

d. *Submitted By:* City of Hamilton, Ohio.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* The project would be located on the Ohio River in Bracken County, Kentucky. The existing dam is owned and operated by the U.S. Army Corps of Engineers (Corps). The project would occupy United States lands administered by the Corps.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Michael Perry, Director of Electric, City of Hamilton, Ohio, 345 High Street, Hamilton, OH 45011, (513) 785–7229.

i. *FERC Contact:* Peter Leitzke at (202) 502–6059; or e-mail at *peter.leitzke@ferc.gov.*

j. The City of Hamilton, Ohio, filed its Notice of Intent to File License Application using the Traditional Licensing Process on June 12, 2006. With this notice, the Director of the Office of Energy Projects approves City of Hamilton, Ohio's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-

Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Kentucky State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Hamilton, Ohio, as the Commission's non-Federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act, Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and Section 106 of the National Historic Preservation Act.

m. The City of Hamilton, Ohio, filed a Pre-Application Document (PAD) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13538 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 10, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12685–000.

c. *Date filed:* June 13, 2006.

d. *Applicant:* Don L. Hansen.

e. *Name of Project:* Tapps Lake Dam Hydroelectric Project.

f. *Location:* On the White River in Pierce County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Don L. Hansen, 2517 NE. 1st Street, Renton, Washington, (425) 235–4552, E-mail *ladonza@comcast.net.*

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following: (1) The existing 352-foot-long, 11-foot-high White River Diversion Dam, (2) an existing impoundment having a surface area of 2,880 acres with a storage capacity of 67,000 acre-feet and normal water surface elevation of 453 feet mean sea level, (3) two existing intake structures, (4) an existing powerhouse containing four existing generating units with an installed capacity of 70-megawatts, (5) an existing 4,181-foot-long, 480 kilovolt transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 613.2 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives

Magalie R. Salas,

Secretary.

[FR Doc. E6–13539 Filed 8–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality and Security Workgroup Meeting

ACTION: Meeting cancellation.

SUMMARY: This notice announces the cancellation of the eighth meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

Canceled Date/Time: August 14, 2006, 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: For further information about the Consumer Empowerment Workgroup, please visit the following Web site: *http://www.hhs.gov/healthit/ahic/ce_main.html.*

Dated: August 7, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–6975 Filed 8–16–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the eighth meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: September 12, 2006 from 8:30 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: A Web cast of the Community meeting will be available on the NIH Web site at the following location: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: August 7, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–6976 Filed 8–16–06; 8:45 am]

BILLING CODE 4150–26–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition To Designate a Class of Employees at Blockson Chemical Company (Also Known As Olin Mathieson), Joliet, IL, To Be Included in the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at Blockson Chemical Company (also known as Olin Mathieson), Jolit, Illinois, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to a revision as warranted by the evaluation, is as follows:

Facility: Blockson Chemical Company (also known as Olin Mathieson).

Location: Joliet, Illinois.

Job Titles and/or Job Duties: All workers who worked in Building 55 at the Blockson Chemical Company.

Period of Employment: January 1, 1951 to December 31, 1962.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: August 11, 2006.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 06–6985 Filed 8–16–06; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition To Designate a Class of Employees at Los Alamos National Laboratory, Los Alamos, NM, To Be Included in the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Los Alamos National Laboratory, Los Alamos, New Mexico, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Los Alamos National Laboratory.

Location: Los Alamos, New Mexico.

Job Titles and/or Job Duties: All Department of Energy employees, contractors, and subcontractors employed in all Tech areas.

Period of Employment: 1943–1975.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: August 11, 2006.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 06–6986 Filed 8–16–06; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: State-Based Occupational Safety and Health Surveillance, Program Announcement With Special Receipt Date Program Announcement Number (PAR) 04–106

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: State-Based Occupational Safety and Health Surveillance, Program Announcement with Special Receipt Date PAR 04–106.

Time and Date: 12 p.m.–2 p.m., September 1, 2006 (Closed).

Place: Teleconference, 2400 Century Parkway, NE., 4th Floor, Atlanta, GA 30345.

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 research grants in response to PAR 04–106, ''State-Based Occupational Safety and Health Surveillance,'' Program Announcement with Special Receipt Date.

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, phone (404) 498–2543.

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: August 10, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–13555 Filed 8–16–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0166]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; MedWatch—The Food and Drug Administration Safety Information and Adverse Event Reporting Program; Proposal to Survey MedWatch Partners Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''MedWatch—The Food and Drug Administration Safety Information and Adverse event Reporting Program; Proposal to Survey MedWatch Partners Organizations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Liz Berbakos, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 1, 2006 (71 FR 25591), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0593. The approval expires on December 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13503 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0500]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities—Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ≥Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities—Survey≥ has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Liz Berbakos, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 2006 (71 FR 30146), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0548. The approval expires on August 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13565 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Heparin Catheter Lock-Flush Solutions; Transfer of Primary Responsibility from Center for Drug Evaluation and Research to Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; announcement of transfer.

SUMMARY: The Food and Drug Administration (FDA) is announcing the transfer of primary responsibility for the regulation of heparin catheter lock-flush solution products from the Center for Drug Evaluation and Research (CDER) to the Center for Devices and Radiological Health (CDRH). These products are combination drug-device products. The transfer of lead review responsibility to CDRH is based on FDA's determination that the primary mode of action for these heparin catheter lock-flush solution products is that of the device part of the combination. The transfer provides consistency and efficiency in the regulation of these combination products by treating like products similarly.

DATES: The effective date of the transfer is October 16, 2006.

FOR FURTHER INFORMATION CONTACT:

For information regarding this notice: James S. Cohen, Office of the Commissioner (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, Rockville, MD 20855, 301–427–1934.

For questions on what to submit in the 510(k) submission: Sheila A. Murphe, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., rm. 350AA, Rockville, MD 20850, 301–443–8913, ext. 203.

SUPPLEMENTARY INFORMATION: Heparin catheter lock-flush solution products are intended to enhance the performance of intravascular catheters. An intravascular catheter is a device that consists of a slender tube and any necessary connecting fittings that are inserted into a patient's vascular system for short-term use (less than 30 days) to sample blood, monitor blood pressure, or administer fluids intravenously. Heparin catheter lock-flush solutions are periodically inserted into and stored within the catheter to keep the catheter patent and to prevent blood from clotting within the catheter between uses.

Prior to the mid-1990's, heparin catheter lock-flush solution products were regulated under the new drug and abbreviated new drug provisions of the Federal Food, Drug, and Cosmetic Act (the act), with CDER serving as the lead agency review component. Many of the available marketed products were approved under abbreviated new drug applications (''generic drugs''). However, more recently, based on several jurisdictional determinations by FDA for specific products, applications for catheter lock-flush solutions containing anticoagulant, such as heparin, or antimicrobial components have been assigned to CDRH and regulated under the device provisions of the act. FDA is now transferring the applications for heparin catheter lock-flush solution products that are in CDER to reflect these more current jurisdictional determinations.

Heparin catheter lock-flush solutions are intended to maintain patency when the catheter is not being used to sample blood, monitor blood pressure, or administer fluids to the patient. The solution component of the product (i.e., sterile saline or sterile water) acts by physically occupying space within the intravenous catheter and exerting pressure on the patient's circulating blood. This action helps to prevent the patient's blood from backfilling into the catheter, clotting, and contributing to microbial contamination. When acting in this way, the solution meets the definition of a device in the act in that it affects the structure or function of the body, and does not achieve its primary intended purposes through chemical or metabolic action (21 U.S.C. 321(h)). Likewise, the heparin (i.e. the anticoagulant) component of the product meets the definition of a drug in that it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man, and is intended to affect the structure or function of the body of man (21 U.S.C. 321(g)).

Catheter lock-flush solutions that contain both drug and device components are combination products as defined in 21 CFR 3.2(e)(1). FDA is responsible for assigning combination products to a lead agency Center for regulation based upon the agency's determination of the combination product's ''primary mode of action.'' (See 21 U.S.C. 353(g)(1) and 21 CFR 3.4.) FDA has determined that the primary mode of action of heparin catheter lock-flush solution products in maintaining catheter patency is attributable to the device component's role in physically occupying space and applying pressure within the catheter.

FDA likewise has determined that the drug component of the product (heparin) performs a secondary role by acting chemically to prevent thrombotic occlusions within the catheter.

Accordingly, to enhance consistency and efficiency in the regulation of these combination products by treating like products similarly, FDA is transferring primary review responsibility from CDER to CDRH for heparin catheter lock-flush solution products that have been regulated under the drug provisions of the act. The transferred products will be reviewed and regulated under the device provisions of the act. As with all combination products, CDRH will consult with CDER regarding the drug components of these products as appropriate. Catheter lock-flush solutions that contain only water or saline are considered devices rather than combination products and are regulated under the device provisions of the act.

The agency intends to assist manufacturers of currently marketed heparin catheter lock- flush solution products in the transition from approved new drug applications (NDAs) or approved abbreviated new drug applications (ANDAs) to 510(k) submissions under the device provisions of the act. Based upon the submissions made and the prior review of these products under the drug provisions of the act, FDA has determined that heparin catheter lock-flush solution products approved under these particular approved NDAs or ANDAs are substantially equivalent to heparin catheter lock-flush solution products cleared for marketing under section 510(k) of the act (21 U.S.C. 360(k)) and the approved NDAs or ANDAs will be considered cleared device premarket notifications (510(k) clearances) under section 510(k) when FDA has provided the sponsor written notification of the transfer and its effective date. No application user fees will be assessed for this administrative transfer. NDA and ANDA manufacturers that have previously notified FDA (i.e. before the date of this notice) that they have discontinued marketing their heparin catheter lock-flush solution products will be subject to review and clearance of a 510(k) submission prior to marketing their product again.

Heparin catheter lock-flush solution products are accessories to, and regulated along with, intravascular catheters as Class II devices (special controls). (See 21 CFR 880.5200.) Upon the effective date of the transfer, the transferred products will be subject to the provisions of section 510(k) of the act and its implementing regulations (part 807 (21 CFR part 807)). The transferred products will be subject to the general control provisions of section 513 of the act, including the Registration and Listing regulation (part 807), the Quality System Regulation (part 820 (21 CFR part 820)), and the Medical Device Reporting regulation (21 CFR part 803).

Manufacturers planning to change or modify the design, components, method of manufacture, or intended use of a transferred heparin catheter lock-flush solution product should evaluate whether a 510(k) submission is required for the change or modification as set forth in § 807.81(a)(3). If a 510(k) submission is required, the manufacturer should cite in its initial submission the NDA or ANDA number held for the product and include a copy of the letter sent from FDA notifying the sponsor of the transfer of review responsibility to CDRH.

FDA finds that there is a substantial likelihood that failure to comply with the Quality System Regulation (part 820) for this product will potentially present a serious risk to human health. Therefore, future 510(k) submissions for heparin catheter lock-flush solution products will be subject to pre-clearance inspections in accordance with section 513(f)(5) of the act (21 U.S.C. 360c).

FDA will contact applicants holding approved NDAs or ANDAs that it believes have products affected by this transfer. Holders of applications subject to transfer, holders of applications for discontinued heparin catheter lock-flush solutions products, or holders of applications for catheter lock-flush solution products with other ingredients who are uncertain as to which agency Center has primary jurisdiction, should contact James S. Cohen (see the **FOR FURTHER INFORMATION CONTACT** section).

Dated: August 9, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13509 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0312]

Preparation for International Conference on Harmonization Meetings in Chicago, Illinois; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for ICH meetings in Chicago, Illinois'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Chicago, IL. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Groups meetings in Chicago, IL, October 23 through 26, 2006, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on Monday, October 2, 2006, from 1:30 p.m. to 4 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3d Fl., Conference Room G, Rockville, MD 20857. For security reasons, all attendees are asked to arrive no later than 1:25 p.m., as you will be escorted from the front entrance of 5600 Fishers Lane to Conference Room G.

Contact Person: Tammie Bell, Office of the Commissioner (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0919, e-mail: *Tammie.Bell2@fda.hhs.gov*, FAX: 301–480–0716.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material and requests to make oral presentations, to the contact person by September 25, 2006. If you need special accommodations due to a disability, please contact Tammie Bell at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical

requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org*.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by September 25, 2006, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on September 18, 2006, via the Internet at *http://www.fda.gov/cder/meeting/ICH_20061002.htm*.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: August 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13505 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 5 and 6, 2006, from 8:30 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Mimi Phan, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6801, e-mail: *mimi.phan@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading ''Advisory Committee for Pharmaceutical Science.'' (Click on the year 2006 and scroll down to the above named committee meeting.)

Agenda: On October 5, 2006, the committee will: (1) Receive an update on the International Conference on Harmonization Quality Topics (Q8, Q9, Q10, Q4B, QOS) and discuss the impact on current regulatory direction, and (2) receive and discuss a series of presentations from the different offices within the Office of Pharmaceutical Science on progress being made on quality-by-design (QBD) initiatives, followed by presentations from the pharmaceutical industry trade associations (The Generic Pharmaceutical Association [GPhA] and The Pharmaceutical Research and Manufacturers of America [PhRMA]) on their QBD perspectives and issues. On October 6, 2006, the committee will: (1) Receive an awareness presentation on risk management for complex pharmaceuticals, (2) receive presentations and discuss bioequivalence issues pertaining to highly variable drugs, (3) discuss current thinking on issues and definitions pertaining to nanotechnology, (4) discuss implementation of definitions for topical dosage forms, and (5) receive an update and discuss current strategies and direction for the Critical Path Initiative.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 21, 2006. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 21, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mimi Phan at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

August 8, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–13506 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of the meeting of the Psychopharmacologic Drugs Advisory Committee. The meeting was announced in the **Federal Register** of July 20, 2006 (71 FR 41220). The amendment is being made to reflect a change in the *Date and Time* and *Agenda* portion of the notice. The *Agenda* scheduled for September 7, 2006, has been cancelled. The *Agenda* portion scheduled for September 8, 2006, has been moved to September 7, 2006. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Cicely Reese, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cicely.reese@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 20, 2006, FDA announced that a meeting of the Psychopharmacologic Drugs Advisory Committee would be held on September 7, 2006, to discuss new drug application (NDA) 21–999, paliperidone extended-release (ER) tablets, Janssen, L.P./Johnson & Johnson Pharmaceutical Research and Development, L.L.C., proposed indication for treatment of schizophrenia and on September 8, 2006, to discuss NDA 21–992, desvenlafaxine succinate (DVS 233), ER tablets, Wyeth Pharmaceuticals, proposed indication for treatment of major depressive disorder. On page 41220, in the first column, the Date and Time portion of the meeting is amended to read as follows:

Date and Time: The meeting will be held on September 7, 2006, from 8 a.m. to 5 p.m.

On page 41220, second column, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: On September 7, 2006, the committee will discuss new drug application (NDA) 21–992, desvenlafaxine succinate (DVS 233), extended-release tablets, Wyeth Pharmaceuticals, proposed indication for treatment of major depressive disorder (MDD).

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 8, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–13502 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0301]

Draft Guidance for Industry; Animal Drug User Fees: Fees Exceed Costs Waivers and Reductions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry (#183) entitled ''Animal Drug User Fees: Fees Exceed Costs Waivers and Reductions.'' The draft guidance explains the procedures FDA expects to use to evaluate waiver requests under the fees exceed costs waiver provision of the Animal Drug User Fee Act of 2003.

DATES: Submit written or electronic comments on the draft guidance by October 31, 2006 to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance document 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dave Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Animal Drug User Fee Act of 2003 (ADUFA) (Public Law 108–130) amended the Federal Food, Drug, and Cosmetic Act (the act) and requires that FDA assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from, or a reduction of, those fees in certain circumstances.

The draft guidance explains the procedures FDA expects to use to evaluate waiver requests under the fees exceed costs waiver provision of ADUFA. These procedures may be modified in the future as FDA gains more experience with waiver requests.

To qualify for waiver consideration for fees due on or after October 1, 2004, a written request for a fees exceed costs waiver or reduction must be submitted no later than 180 days after the fee is due (section 740(i) of the act (21 U.S.C. 379j–12(i))).

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's Good Guidance Practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the topic. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative approaches may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in Guidance for Industry #170. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been approved under OMB Control No. 0910–0540.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this 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 full title of the draft guidance document and the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on the Internet site, select Docket No. 2006D–0301, ''Animal Drug User Fees; Fees Exceeds Costs Waivers and Reductions'' and follow the directions. A copy of this document may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: August 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13507 Filed 8–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the NIH Office of Portfolio Analysis and Strategic Initiatives (OPASI) Council of Councils (Council).

The Council will consult with, and provide advice and recommendations to the Director NIH, the Director, OPASI, and the individual Institute and Center (IC) Directors on potential trans-NIH initiatives at the conceptual stage. The Council's advice and recommendations will assist the IC Directors in identifying trans-NIH initiatives to be pursued for further development.

Duration of this committee is two years from the date the Charter is filed.

Dated: August 8, 2006.

Elias Zerhouni,

Director, National Institutes of Health.

[FR Doc. 06–6966 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: October 25, 2006.

Time: 7:30 a.m. to 6 p.m.

Agenda: (1) Meeting with NCI Acting Director; (2) Updates on NCI Programs; (3) Update on NCI Budget and Legislation; Report from NCI Listens and Learns Working Group and DCLG Summit Working Group; (4) Public Comment; (5) Action Items and Conclusion.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Barbara Guest, Executive Secretary, Office of Liaison Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 2202, Rockville, MD 20892–8324, 301–496–0307, *guestb@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: August 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6963 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), 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 Cancer Advisory Board.

Open: September 6, 2006, 8:30 a.m. to 4:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: September 6, 2006, 4:15 p.m. to 5:15 p.m.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: September 7, 2006, 8 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding

the statement of the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6964 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Advisory Neurological Disorders and Stroke Council, Council Training Career Development and Special Programs Subcommittee.

Date: September 13, 2006.

Open: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephen J. Korn, PhD, Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527, (301) 496–4188.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Basic and Preclinical Programs Subcommittee.

Date: September 14, 2006.

Open: 8 a.m. to 9 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, A Wing, 31 Center Drive, Conference Room 8A–28, Bethesda, MD 20892.

Closed: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, A Wing, 31 Center Drive, Conference Room 8A–28, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Clinical Trials Subcommittee.

Date: September 14, 2006.

Closed: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: 9 a.m. to 10 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, C Wing, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135, *jm137f@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6962 Filed 8–16–06; 8:45 am]

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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: September 11, 2006.

Open: 8 a.m. to 12:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) a report of the Subcommittee on Planning and Policy; (3) Developmental Biology, Genetics and Teratology Branch presentation; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: August 8, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6965 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP), NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM): Scientific Workshop on Alternative Methods To Refine, Reduce, or Replace the Mouse LD_{50} Assay for Botulinum Toxin Testing; Request for In Vivo and In Vitro Data

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), Department of Health and Human Services.

ACTION: Workshop announcement and data request.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and NICEATM announce an upcoming ''ICCVAM/NICEATM/ECVAM Scientific Workshop on Alternative Methods to Refine, Reduce, or Replace the Mouse LD_{50} Assay for Botulinum Toxin Testing.'' The workshop is being co-organized by ICCVAM, NICEATM, and the European Centre for the Validation of Alternative Methods (ECVAM). This workshop is open to the public with attendance limited only by the space available. ICCVAM and NICEATM also invite the submission of (1) data from botulinum toxin test methods and (2) abstracts for scientific posters for display at the workshop (discussed more under ''Supplemental Information'').

DATES: The workshop will be held on November 13 and 14, 2006. Sessions for both days will begin at approximately 8:30 a.m. and end at approximately 5 p.m. The deadline for submission of an abstract is September 29, 2006. The deadline for submission of data is October 20, 2006.

Individuals who plan to attend the workshop are strongly encouraged to register in advance (by October 30, 2006) with NICEATM. Registration information, an agenda, and additional information will be available on the workshop Web site (*http://iccvam.niehs.nih.gov/methods/biolodocs/biolowkshp/wkshpinfo.htm*) and upon request from NICEATM (see ''**FOR FURTHER INFORMATION CONTACT**'' above).

ADDRESSES: The workshop will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least 7 days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Correspondence should be addressed to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

In October 2005, the Humane Society of the United States (HSUS) submitted a nomination to NICEATM to organize a workshop to evaluate the state-of-the-science for potential alternatives to the mouse LD_{50} assay for botulinum toxin potency testing. The HSUS nomination is available at *http://iccvam.niehs.nih.gov*. See ''Nominations and Submissions.'' ICCVAM considered the nomination and supported, with a high priority, the concept of a workshop to discuss alternative methods and approaches that might reduce, refine, or replace the use of animals for botulinum toxin potency testing. The Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) discussed this nomination at its meeting on December 12, 2005, and concurred with ICCVAM. The goals of the workshop are to (1) review the state-of-the-science and current status of alternative methods that may refine (less pain and distress), reduce, or replace the use of mice for botulinum toxin testing and (2) identify priorities for research, development, and validation efforts needed to advance the use of alternative methods for botulinum toxicity testing.

Preliminary Workshop Agenda

Day 1 Monday, November 13, 2006

- Welcome and Introduction of Workshop Goals and Objectives.
- Session 1 Overview of Public Health Needs for Botulinum Toxin Testing and Regulatory Requirements.
- Session 2 Current Understanding and Knowledge Gaps for Botulinum Toxin.
- Session 3 Potential Replacement of Animal Use for Botulinum Toxin Potency Testing.

Day 2 Tuesday, November 14, 2006

- Session 4 Refinement (Less Pain and Distress) of Animal Use for Botulinum Toxin Potency Testing.
- Session 5 Reduction of Animal Use For *In Vivo* Botulinum Testing.
- Session 6 Wrap-up of Panel Discussions.

Call for Abstracts

ICCVAM and NICEATM invite the submission of abstracts for scientific posters to be displayed during the workshop. Posters should address current developments and/or the validation status of alternative test methods for *in vivo* botulinum toxin tests and their potential to reduce, refine, or replace the use of the mouse LD_{50} assay. The body of the abstract is limited to 400 words or less and key references relevant to the abstract may be included after the abstract body. However, the length of the abstract and references should not exceed one page. All submissions should be in at least 12-point font and all margins for the document should be no smaller than one inch. Title information should include the names of all authors and their affiliations. The name and contact

information (i.e., address, phone number, fax number, e-mail address) for the corresponding or senior author should be provided at the end of the abstract.

A statement indicating whether animals or humans were used in studies described in the poster must accompany all abstracts. All abstracts that involve studies using animals or animal tissues should be accompanied by a statement from the senior author certifying that all animal use was carried out in accordance with applicable laws, regulations, and guidelines, and that the appropriate Institutional Animal Care and Use Committee approved the studies. All abstracts that involve studies using humans should be accompanied by a statement from the senior author certifying that all human use was conducted in accordance with applicable laws, regulations, and guidelines, and that the appropriate Institutional Review Board approved the studies.

Abstracts should be submitted by e-mail to *niceatm@niehs.nih.gov.* The deadline for abstract submission is close of business on September 29, 2006. ICCVAM and NICEATM will review the submitted abstracts. The corresponding author will be notified of the abstract's acceptance, along with guidelines for the poster format, approximately five weeks prior to the workshop.

Request for Data

NICEATM invites the submission of data and information from *in vivo* botulinum toxin testing and *ex vivo* and *in vitro* test methods being used or evaluated as potential alternatives to the mouse assay for botulinum toxin testing. The deadline for data submission is October 20, 2006. These data will be provided to the workshop participants and workshop panels for their review and consideration during workshop discussions. A similar request for data was announced previously (**Federal Register**, Vol. 71, No. 18, pp. 4603–4604, January 27, 2006, available at *http://iccvam.niehs.nih.gov/*).

When submitting chemical and protocol information/test data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable). NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission should preferably include the following information, as appropriate:

- Specific type of botulinum neurotoxin tested (e.g., Clostridium botulinum neurotoxin type A).
- *In vivo* potency test protocol used and test results.
- Individual animal responses, including time of onset of specific clinical signs and death.
- Alternative *ex vivo* or *in vitro* test protocol used and test results.
- The extent to which the study complied with national or international Good Laboratory Practice guidelines.
- Date of the study.
- The organization that conducted the study

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 U.S. Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 2851–2, 2851–5 [2000]) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM–related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found at the ICCVAM–NICEATM Web site (*http://iccvam.niehs.nih.gov*).

SACATM provides external advice to the Director of the NIEHS, ICCVAM, and NICEATM regarding statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM, including the charter, roster, and records of past meetings can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: August 7, 2006.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–13525 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The 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: Center for Scientific Review Special Emphasis Panel; A Case-Control Study of ACL Risk Factors.

Date: August 16, 2006.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Prognosis and Predictions of ACL Reconstruction.

Date: August 21, 2006.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Influenza Vaccine Development.

Date: August 22, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1187, *jh377p@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Engineering Research.

Date: August 31, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6961 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Report on Carcinogens; Proposed Review Process for the 12th Report on Carcinogens (RoC): Request for Public Comment

AGENCY: National Institute of Environmental Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for public comment.

SUMMARY: The NTP invites public comments on the proposed review process for the 12th RoC. The proposed review process for the 12th RoC is available on the NTP Web site *http://ntp.niehs.nih.gov* (select ''Report on Carcinogens'') or by contacting Dr. C.W. Jameson at the address provided below.

DATES: Comments will be accepted until September 18, 2006.

ADDRESSES: All correspondence should be directed to Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709; telephone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice announces the proposed review process applicable to nominations to the 12th RoC. Two important new elements in the proposed RoC review process are (1) the public peer review of draft background documents by ad hoc scientific expert panels and (2) the peer review of draft substance profiles by the NTP Board of Scientific Counselors. In addition, the NTP will also, on a trial basis, prepare a response to public comments for the 12th RoC. The proposed RoC review process is described in more detail on the NTP Web site (*http://ntp.niehs.nih.gov* select ''Report on Carcinogens'').

Request for Comments on the Proposed RoC Review Process

The NTP invites public comments on the proposed 12th RoC review process. The NTP will consider any comments received on or before September 18, 2006, as it finalizes the process to review nominations to the 12th RoC. The final 12th RoC review process will be announced in a future **Federal Register** notice and through NTP publications. Individuals submitting public comments are asked to include relevant contact information [name, affiliation and sponsoring organization (if any), address, telephone, fax, and e-mail]. Written submissions will be made available on the NTP Web site as they are received (*http://ntp.niehs.nih.gov/select* ''Report on Carcinogens'') and added to the public record.

Background Information on the Report on Carcinogens

The RoC is a congressionally mandated document (section 301(b)(4) of the Public Health Services Act, 42 U.S.C. 241(b)(4)), published by the Secretary of Health and Human Services (HHS), that identifies agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a carcinogenic hazard to human health. The Secretary, HHS, has delegated responsibility for preparing the draft report to the NTP. Substances are listed in the RoC as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen. Development of the RoC is based upon a review of nominations (for new substances that are under consideration for listing or for reclassification of the listing status for a substance already listed) and a multi-step, scientific review process with opportunity for public comment.

Dated: August 7, 2006.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–13524 Filed 8–16–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[DHS–2006–0042]

Science and Technology Directorate; Submission for Review; Reinstatement of a Previously Approved Information Collection Request for Support of SAFETY Act Application Kit 1640–0001

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60 day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) is soliciting public comment on the application forms and instructions (hereinafter ''Application Kit'') designed to assist persons applying for coverage under the SAFETY Act of 2002. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until October 16, 2006.

ADDRESSES: You may submit comments, identified by docket number DHS–2006–0042, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *linda.vasta@dhs.gov.* Include docket number DHS–2006–0042 in the subject line of the message.
- Mail: Science and Technology Directorate, ATTN: SAFETY Act, 245 Murray Drive, Bldg 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Linda Vasta (703) 575–4511 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On June 8, 2006, DHS published a final rule interpreting and implementing the SAFETY Act of 2002 (see 71 FR 33147). In connection with the issuance of this final rule, DHS consolidated the forms and instructions designed to assist persons applying for SAFETY Act coverage. The forms and instructions were consolidated into one Application Kit.

DHS invites the general public to comment on the proposed reinstatement of OMB Information Collection 1640–0001 (Application Kit), as described below.

Interested parties can obtain copies of the Application Kit by going to the Office of Safety Act Web site and downloading copies thereof. The address is: *http://www.safetyact.gov.* The Application Kit may also be obtained by calling or writing the point of contact listed above.

Please note that the Application Kit includes various forms for different types of SAFETY Act applications. As explained herein, these separate forms are intended to be flexible and permit the Applicants to provide relevant information to their specific applications without undue bureaucratic burden. The Department is committed to improving its SAFETY Act processes and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of a previously approved collection.

(2) *Title of the Form/Collection:* SAFETY Act Application Kit

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS–S&T–I SAFETY–0001 through 0010.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or other for-profit and not-for profit institutions; the data collected through the Application Kit will facilitate efforts of responding persons to develop vital anti-terrorist technology by obtaining coverage under the SAFETY Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2500 respondents with an average of slightly more than 48.5 hours per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 121,400 burden hours.

Dated: August 14, 2006.

Gregg Piermarini,

Director of Engineering, Chief Information Office, Science and Technology Directorate.

[FR Doc. 06–7002 Filed 8–14–06; 3:56 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application for Allowance in Duties

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Allowance in Duties. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 16, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Allowance in Duties.

OMB Number: 1651–0007.

Form Number: CBP Form-4315.

Abstract: This collection is required by the CBP in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importer's claims for such duty allowances.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 1,600.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 9, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–13526 Filed 8–16–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Serially Numbered Substantial Holders or Containers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Serially Numbered Substantial Holders or Containers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 16, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Serially Numbered Substantial Holders or Containers.

OMB Number: 1651–0035.

Form Number: N/A.

Abstract: Free clearance is permitted for serially numbered holders or containers of foreign manufacture if the owner of the container places certain markings on them in accordance with the Harmonized Tariff Schedule.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 4.5 hours.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 9, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–13527 Filed 8–16–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITE

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 16, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report.

OMB Number: 1515–0086.

Form Number: CBP Forms 214, 214A, 214B, 214C, and 216.

Abstract: CBP Forms 214, 214A, 214B, and 214C, Application for Foreign-Trade Zone Admission and/or Status Designation, are used by business firms which bring merchandise into a foreign trade zone, to register the admission of such merchandise to zones and to apply for the appropriate zone status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 325,000.

Estimated Time per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 79,500.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 9, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–13528 Filed 8–16–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Great Dismal Swamp and Nansemond National Wildlife Refuges: Final Comprehensive Conservation Plan and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the final Comprehensive Conservation Plan (CCP) is available for Great Dismal Swamp and Nansemond National Wildlife Refuges (NWR). Prepared in conformance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife System Improvement Act of 1997, and the National Environmental Policy Act of 1969, the plan describes how the Service intends to manage the refuges over the next 15 years. A Finding of No Significant Impact was approved by the Regional Director.

ADDRESSES: Copies of the CCP is available on compact diskette or in hard copy, and may be obtained by writing Deloras Freeman, Great Dismal Swamp NWR, 3100 Desert Road, Suffolk, Virginia 23434, or by e-mail at *deloras_freeman@fws.gov.* This document may also be accessed at the Web address *http://library.fws.gov/ccps.htm.*

FOR FURTHER INFORMATION CONTACT: Deloras Freeman, Refuge Planner at the above address, by phone at 757–986–3705, or by e-mail at *deloras_freeman@fws.gov.*

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), requires the Service to develop a CCP for each refuge within the system. The purpose of developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and habitats, a CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The CCP will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1969, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347, as amended).

Established in 1974, Great Dismal Swamp NWR encompasses 111,203 acres, the largest intact remnant of a vast habitat that once covered more than 1 million acres of southeastern Virginia and northeastern North Carolina. Nansemond NWR, established December 12, 1973, is an unstaffed satellite refuge encompassing 423 acres.

Our Final CCP includes management direction for each of the refuges, and details habitat management and public use programs based on the vision for the refuge at the time of its establishment in 1974. We have included the restoration of 8,000 acres of Atlantic white cedar habitat, the restoration of 10,000 acres of red-cockaded woodpecker habitat, and the restoration of a remnant marsh to its original 250 acres from its present 30 acres. We would establish a neotropical migratory bird focus area near Jericho Lane, in which we would focus habitat management and modeling, population surveys, and education and interpretation related to neotropical migratory bird populations. We will implement a limited bear hunt. This hunt will occur on a total of 2 days during November and December, with a total maximum of 100 permits issued. We anticipate a harvest of 11 bears with a harvest limit target of 20 bears. If 10 or more bears are taken the first day, various parameters will be evaluated and the second hunt day may be cancelled. As with the deer hunt, dogs will not be allowed as a means to hunt bears. The bear hunt is currently authorized in the Code of Federal Regulations (50 CFR Part 32), but has never been implemented.

We have also targeted building projects, such as the development of an environmental education site at Jericho Ditch in Suffolk, Virginia. We will also develop an exhibit to be situated at the downtown visitor center that is run by the City of Suffolk. Additionally, we propose the conversion of the current administrative building for a concession operation that will rent kayaks and outdoor equipment and run tours of the swamp, the construction of a new visitor center and headquarters between the old and new Route 17 in Chesapeake, Virginia, and the construction of new trails, observation and photography platforms, or towers. The CCP proposes to enhance environmental education and outreach, and to establish hunter safety and youth hunting programs.

• The Service solicited comments on the draft CCP/EA for Great Dismal Swamp and Nansemond NWRs from March 13 to April 24, 2006 (March 13, 2006, 71 FR 12709). We developed a list of substantive comments that required responses. Editorial suggestions and notes of concurrence with or opposition to certain proposals were noted and included in the decision making process, but did not receive formal responses. The Final CCP includes responses to all substantive comments.

Based upon comments that we received, we have chosen management alternative B, with the following modifications:

• *Land Protection:* A number of comments expressed support for protection of the Great Dismal Swamp ecosystem, including surrounding lands. Additionally, a comment voiced concern that the wording of Goal 3 did not adequately reflect the refuge purpose as stated in the Dismal Swamp Act. The refuge addressed these comments with the following actions:

(1) Addition of the following strategy to Goal 3: ''Develop sound working relationships with adjoining landowners, nearby neighboring landowners, and other key landowners within the ecosystem to protect the integrity of the refuge boundary and further the protection of the ecosystem.'' The refuge will take advantage of partnership opportunities around the refuge.

(2) Goal 3 was broadened to better reflect the intent of the enabling legislation and reworded as: ''Provide protection and restoration of those areas within Great Dismal Swamp ecosystem that are remnants of the Great Dismal Swamp and/or are restorable to Great Dismal Swamp habitat while providing

support to the protection and restoration of all its components and adjacent habitats that directly affect the vitality and viability of the ecosystem.''

• *Wildlife Observation:* A suggestion was made to develop a through-swamp canoe/kayak trail. This suggestion was adopted. A through-swamp canoe/kayak trail will be developed in Washington Ditch from the existing parking area to Lake Drummond and then via the Feeder Ditch to the Dismal Swamp Canal, and a partnership will be sought to oversee maintenance of the trail.

• *Road Improvements:* A number of comments about the amount of road paving that was proposed were received. The refuge decided to reduce the amount of paving. The proposed auto tour route and the access to Lake Drummond will remain as gravel roads. Paving will only occur on highest use access roads at Washington Ditch and Jericho Ditch.

Dated: July 26, 2006.

Michael G. Thabault,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. E6–13553 Filed 8–16–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Rachel Carson National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Rachel Carson National Wildlife Refuge (NWR) Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA). It describes how we intend to manage Rachel Carson NWR during the next 15 years. We prepared this Draft CCP/EA in conformance with the National Environmental Policy Act (NEPA) and the National Wildlife Refuge System Administration Act, as amended.

DATES: The Draft CCP/EA is available for public review and comment. We must receive your comments on or before September 18, 2006. During the 30-day comment period, we plan to host public meetings in the local area. We will post the details of each meeting at least 2 weeks in advance to our project mailing list in local papers, at the refuge, and at our Web site, *http://www.fws.gov/northeast/rachelcarsonrefuge/.*

ADDRESSES: You may obtain copies of the draft CCP/EA on compact disk or in print by writing to Carl Melberg, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, or e-mailing *northeastplanning@fws.gov.* You may also view the draft on the Web at *http://library.fws.gov/ccps.htm.*

FOR FURTHER INFORMATION CONTACT: Carl Melberg, 413–253–8521.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), requires the Service to develop a CCP for each refuge. The purpose of developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System (NWRS), in conformance with the sound principles of fish and wildlife science, natural resources conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental interpretation and education. The Service will review and update each CCP at least once every 15 years, in accordance with the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d) (NEPA).

This Draft CCP/EA identifies goals, long-range objectives, and strategies for achieving the purposes for which this refuge was established. The document poses three management alternatives:

Alternative A (Current Management): This alternative is the no action alternative required by NEPA. Alternative A defines our current management activities, including those planned, funded, or under way, and serves as the baseline against which to compare the other two action alternatives. It would maintain our present levels of approved refuge staffing and the biological and visitor programs now in place. Three new facilities are incorporated in this alternative to support current and approved management, staffing, and administrative obligations. The refuge would continue to acquire the 3,833 acres remaining within its current approved boundary.

Alternative B (the Service-preferred alternative): This alternative represents the combination of actions that we believe will most effectively achieve the purposes and goals of the refuge and address the major issues. It builds on the programs identified under current management. Funding and staffing would need to increase to adequately support the program expansions we propose. We propose to expand the refuge by 5,558 acres beyond its current approved boundary of 9,126 acres. We would add acreage to Brave Boat Harbor, Upper Wells, Spurwink, Biddeford, Mousam River, Little River, and Moody Divisions, and we would establish a new York River Division, encompassing the largest undeveloped salt marsh south of Portland. Alternative B also includes removing 101 parcels totaling 164 acres from the current approved boundary that are no longer suitable for Service acquisition. The refuge would continue to acquire the 3,833 acres remaining within its current approved boundary. This proposal increases the protection and management of migratory wildlife, endangered and threatened species, and other species of concern by protecting additional aquatic and upland habitat. It includes expanded management and additional public use opportunities for wildlife-dependent recreation such as hunting and fishing, as well as wildlife observation, photography, and interpretation. A new administrative complex, including office space, maintenance facilities, and visitor contact station, will be built. This alternative includes combining the Moody, Lower Wells, Upper Wells, and Mousam River Divisions into one, the Wells Bay Division. This alternative will also increase the number and quality of wildlife-dependent recreational opportunities, and allow us to use Rachel Carson NWR's proximity to Portland and urban communities to better promote NWRS principles and improve public support for national wildlife refuges.

Alternative C is the same as alternative B, however, it proposes to expand the refuge by 11,397 acres beyond the current approved boundary. That 11,397-acre expansion includes the 5,558 acres in Alternative B. It would add acreage to Brave Boat Harbor, Upper Wells, Spurwink, Biddeford, and Moody Divisions, and would establish a new York River Division, encompassing the largest undeveloped salt marsh south of Portland. This alternative will also increase the number and quality of wildlife-dependent recreational

opportunities, especially hunting and fishing, further protect threatened and endangered species, and control invasive species.

After the 30-day review and comment period ends, we will analyze, address, and consider all comments received and prepare a final CCP. Availability of the final CCP will be published in the **Federal Register**. The Director must approve the proposed refuge boundary expansion before the Regional Director considers approving the expansion.

All comments, including names and addresses, become part of the official public record. Requests for the public record of this plan will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations, and other Service and Departmental policies and procedures.

Dated: August 11, 2006.

Marvin E. Moriarty,

Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035–9589.

[FR Doc. E6–13558 Filed 8–16–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–06–1420–BJ]

Notice of Filing of Plats of Survey; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The plat representing the dependent resurvey and survey and subdivision of sections in Township 7 North, Range 10 West, accepted April 24, 2006, for Group 1032 New Mexico.

The plat representing the dependent resurvey and subdivision of sections for Township 9 North, Range 4 West, accepted July 20, 2006 for Group 1048 New Mexico.

The plat representing the dependent resurvey and survey of certain Lots in Section 10 (Including The Retracement of a portion of the West Boundry of San Miguel Del Bado Grant, Tract 2 and portions of the subdivisional lines) for Township 13 North, Range 14 West, accepted July 21, 2006 for Group 1049 New Mexico.

The plat representing the dependent resurvey for Township 29 North, Range 11 West, accepted August 7, 2006 for Group 1053 New Mexico.

The plat representing the resurvey and subdivision of sections for Township 7 North, Range 9 West, accepted July 24, 2006 for Group 1041 New Mexico.

The Town of Tejon Grant and San Antonio De Las Huertas Grant, representing the corrective resurvey, dependent resurvey and survey accepted July 21, 2006 for New Mexico.

Indian Meridian, Oklahoma

The plat in two sheets, representing the dependent resurvey and survey for Township 9 North, Range 14 East, accepted May 9, 2006 for Group 116 Oklahoma.

Sixth Principle Meridian, Kansas

The supplemental plat, representing the subdivision of sections for Township 33 South, Range 40 West, accepted July 24, 2006, for Kansas.

The supplemental plat, representing the subdivision of sections for Township 33 South, Range 41 West, accepted July 24, 2006, for Kansas.

The supplemental plat, representing the subdivision of sections for Township 34 South, Range 41 West, accepted July 24, 2006, for Kansas.

The supplemental plat, representing the subdivision of sections for Township 34 South, Range 40 West, accepted July 24, 2006, for Kansas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, and P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: July 8, 2006.

Stephen W. Beyerlein,

Acting Chief Cadastral Surveyor, New Mexico.

[FR Doc. 06–6972 Filed 8–16–06; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee; Notice of Nomination Solicitation.

SUMMARY: THE NATIONAL PARK SERVICE IS SOLICITING NOMINATIONS FOR TWO MEMBERS OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE. THE SECRETARY OF THE INTERIOR WILL APPOINT ONE MEMBER FROM NOMINATIONS SUBMITTED BY INDIAN TRIBES, NATIVE HAWAIIAN ORGANIZATIONS, AND TRADITIONAL NATIVE AMERICAN RELIGIOUS LEADERS. THIS PARTICULAR APPOINTEE IS NOT REQUIRED TO BE A TRADITIONAL NATIVE AMERICAN RELIGIOUS LEADER. THE SECRETARY OF THE INTERIOR WILL ALSO APPOINT ONE MEMBER FROM NOMINATIONS SUBMITTED BY NATIONAL MUSEUM ORGANIZATIONS AND SCIENTIFIC ORGANIZATIONS. Nominations must include the following information.1. Nominations by Indian tribes or Native Hawaiian organizations: Nominations must be submitted on official tribal or organization letterhead with the nominator's original signature and daytime telephone number. The nominator must be the official authorized by the tribe or organization to submit nominations in response to this solicitation. The nomination must include a statement that the nominator is so authorized.

2. Nominations by traditional religious leaders: Nominations must be submitted with the nominator's original signature and daytime telephone number. The nominator must explain how he or she meets the definition of traditional religious leader.

3. Nominations by national museum organizations and scientific organizations: Nominations must be submitted on organization letterhead with the nominator's original signature and daytime telephone number. The nominator must be the official authorized by the organization to submit nominations in response to this solicitation. The nomination must

include a statement that the nominator is so authorized.

4. Information about nominees: All nominations must include the following information:

a. nominee's name, address, and daytime telephone number and e-mail address; and

b. nominee's resume or brief biography emphasizing the nominee's NAGPRA experience and ability to work effectively as a member of an advisory board.

Nominations that do not include all of the abovementioned information will be considered non-responsive to this solicitation.

DATES: Nominations must be received by October 16, 2006.

ADDRESSES: Via U.S. Mail: Address nominations to Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1849 C Street NW (2253), Washington, DC 20240. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to U.S. Government offices, a copy of each mailed nomination should also be faxed to (202) 371–5197. Via commercial delivery: Address nominations to C. Timothy McKeown, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

1. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.*

2. The Review Committee is responsible for—

a. monitoring the NAGPRA inventory and identification process;

b. reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

c. facilitating the resolution of disputes;

d. compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

e. consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;

f. consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

g. making recommendations regarding future care of repatriated cultural items.

3. Seven members compose the Review Committee. All members are appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee.

a. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Native American religious leaders.

b. Three members are appointed from nominations submitted by national museum organizations and scientific organizations.

c. One member is appointed from a list of persons developed and consented to by all of the other members.

4. Members serve as Special Governmental Employees, which requires submission of annual financial disclosure reports and completion of annual ethics training.

5. Appointment terms: Members are appointed for 4–year terms and incumbent members may be reappointed for 2–year terms.

6. The Review Committee's work is completed during public meetings. The Review Committee normally meets face-to-face two times per year, and each meeting is normally two or three days. The Review Committee may also hold one or more public teleconferences of several hours duration.

7. Compensation: Review Committee members are compensated for their participation in Review Committee meetings.

8. Reimbursement: Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings.

9. Additional information regarding the Review Committee, including the Review Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA program Web site, *www.cr.nps.gov/nagpra* (click ''Review Committee'' in the menu on the right).

10. The terms ''Indian tribe,'' ''Native Hawaiian organization,'' and ''traditional religious leader'' have the same definitions as given in 43 CFR 10.2.

FOR FURTHER INFORMATION CONTACT: C. Timothy McKeown, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1849 C Street NW (2253), Washington, DC 20240; telephone (202) 354–2206; e-mail *tim_mckeown@nps.gov*.

Dated: June 26, 2006

C. Timothy McKeown,

Designated Federal Officer,

Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E6–13589 Filed 8–16–06; 8:45 am]

BILLING CODE 4314–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Non-Native Deer Management Plan Point Reyes National Seashore; Marin County, CA; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the national Park Service, Department of the Interior has prepared a Final Environmental Impact Statement (FEIS) identifying and evaluating five alternatives for a Non-Native Deer Management Plan for Point Reyes National Seashore administered lands. When approved, the plan will guide the NPS in managing the herds of non-native deer over the next two decades on all lands administered by Point Reyes National Seashore. Through the FEIS, the potential impacts of a ''no action'' alternative and four ''action'' alternatives are assessed and, where appropriate, mitigation measures are applied to reduce the intensity of the potential effect or to avoid the potential effect. Five other preliminary alternatives were considered but rejected because they did not achieve the objectives of the non-native deer management plan or were infeasible.

Planning Background

Axis deer (*(Axis axis*) are native to India and European fallow deer (*Dama dama*) are native to Asia Minor and the Mediterranean region. Axis and fallow deer were introduced to the point Reyes area in the 1940s and 1950s by local ranchers, before establishment of the Seashore. Between 1976 and 1994, the NPS controlled the populations of the herds by shooting the deer and more than 2,000 non-native deer were culled during this 18-year period. Culling was discontinued in 1994 in response to budgetary and public concerns. For the past 16 years, the NPS has not actively managed the non-native deer and their numbers and overall range have increased to, or surpassed, pre-control levels. Seashore staff estimates current numbers of axis and fallow deer to be

approximately 250 and 860, respectively.

Description of the Planning Area

The planning area for the Non-Native Deer Management Plan (NNDMP) includes NPS lands located approximately 40 miles northwest of San Francisco in Marin County, California. These lands include the 70,046-acre Point Reyes National Seashore, comprised primarily of beaches, coastal headlands, extensive freshwater and estuarine wetlands, marine terraces, and forests; as well as 18,000 acres of the Northern District of golden Gate National Recreation Area (GGNRA), primarily supporting annual grasslands, coastal scrub, and Douglas-fir and coast redwood forests. Thirty-five percent, or 32,000 acres, of Seashore lands are managed and protected as Wilderness.

Purpose and Need for the Federal Action

The primary problems resulting from the presence of non-native deer in the planning area are their interference with native species and native ecosystems; conflicts with the laws, regulations and NPS policies regarding restoration of natural conditions and native species; the impacts on ranchers in the parks; and by affecting park operations and budget. In addition there is the potential for each of these impacts to increase should deer populations expand beyond park boundaries.

As a unit of the NPS, PRNS is governed by a set of laws, regulations and polices including the 2001 Management Policies, and it is the set of rules as well as research data, standard biological and ecological peer-reviewed literature, and public and agency input that the park has used to develop the non-native deer management alternative. Management Policies Section 4.4.1.3 clearly defines ''native species'' as all species that have occurred or now occur as a result of natural processes on lands designated as units of the national park system. ''Exotic species'' are those species that occupy park lands directly or indirectly as the result of deliberate or accidental human activities. Units of the NPS are charged to ''re-establish natural functions and process in human-disturbed components of natural systems (sec 4.1.5).'' The presence and recent population and range expansion of non-native axis and fallow deer in the park is adversely impacting many elements of the natural ecosystem including; competition with, and displacement of, native tule elk and black-tailed deer; the documented potential for transmitting disease to these native ungulates; and degradation of important riparian and oak woodland habitats. If the non-native deer continue to spread unabated, their expansion outside PRNS boundaries could result in these adverse impacts occurring to natural areas throughout Marin County.

The objectives of theNNDMP are:

- To correct past and ongoing disturbances to Seashore ecosystems from introduced non-native ungulates and thereby to contribute substantially to the restoration of naturally functioning native ecosystems.
- To minimize long-term impacts, in terms of reduced staff time and resources, to resource protection programs at the Seashore, incurred by continued monitoring and management of non-native ungulates.
- To prevent spread of populations of both species of non-native deer beyond Seashore and GGNRA boundaries.
- To reduce impacts of non-native ungulates caused by direct consumption of forage, transmission of disease to livestock and damage to fencing to agricultural permittees within pastoral areas.

Proposed Non-Native Deer Management Plan

Alternative E has been identified as the preferred alternative in the Draft EIS and the FEIS. Under this alternative (Removal of All Non-Native Deer by a Combination of Agency Removal and Fertility Control), all axis and fallow deer in the planning area would be eradicated by the year 2021 through a combination of lethal removal and contraception. Culling would be conducted by NPS staff or contractors specifically trained in wildlife sharpshooting. The contraceptive program would incorporate the latest contraceptive technologies to safely prevent reproduction, for as long as possible, and with minimal treatments per animal. Because no long-acting ''sterilant'' has been registered for use in wildlife by the U.S. Environmental Protection Agency (EPA), data on safe and efficacious use of a candidate drug would have to be submitted to the EPA by a sponsoring agency or research group before it could be used at PRNS on the basis of experimental management and population control. Population models of fallow deer at PRNS indicate that under this alternative, if the contraceptive used was effective in blocking fertility for at least 4 years, eradication could be accomplished with fewer fallow deer lethally removed. Because effectiveness of long-term contraceptives on axis deer is unknown, similar models are not yet developed for this species. Studies on sterilant efficacy and monitoring of deer population response to treatment will be used adaptively to guide or refine non-native deer management activities. The goal will be to maximize benefits to natural resources and minimize safety risks to NPS staff, while striving to reduce numbers of animals killed.

Principal Differences Between the Draft and Final EIS

Wildlife monitoring in the PRNS is ongoing and the analysis in the FEIS on impacts of non-native deer has been supplemented by new information since the Draft EIS was published, including the following: A U.S. Geological Survey analysis of the impacts of non-native deer on native black-tailed deer (Fellers, 2006), a U.S. Geological survey report on the impacts of ''lekking'' fallow deer to woodland and riparian vegetation and soils (Fellers and Osbourn, 2006), and a Humboldt State University report on dietary overlap between fallow deer and native tule elk (Fallon-McKnight, 2006). Based on consideration of the results of these studies and other information, which elucidated the adverse impacts of non-native deer on natural resources, discussion in the FEIS of the following resource topics—water resources, soils, vegetation, and wildlife impact—was revisited and conclusions about intensity were clarified.

Information on wildlife contraceptive agents under development (e.g., GonaCon ® and others) and costs has been updated. Information regarding contraceptive agents withdrawn from availability and changes in regulatory authority over these agents was added to the FEIS. This new information became available after release of the Draft EIS and was obtained from experts in the filed of wildlife contraceptive and from the EPA.

Consideration of the recent studies and new information did not necessitate substantively altering the proposal, nor were conclusions about significant of foreseeable environmental consequences substantially changed.

Alternatives to Proposed Plan

The FEIS for the NNDMP analyzes four alternatives in addition to the preferred alternative. Alternatives E and D (Removal of all Non-Native Deer by Agency Removal) were both identified in the Draft EIS as ''environmentally preferred'' and are considered equally likely to best protect the biological and physical environment of the planning area. Both would strive to accomplish eradication of non-native deer within 20 years and consequently would result in

cessation of new adverse impacts caused by non-native deer to wildlife, vegetation, soils, special status species, water resources, and park operations.

Alternative A—No Action. This ''baseline'' alternative represents the current non-native deer management program. It would perpetuate the non-native deer management practices undertaken since 1994, when ranger culling was discontinued. No actions to control the size of non-native deer populations would be taken. In order to ensure protection of native species and ecosystems, continued monitoring for at least 20 years would be an integral part of this alternative as well as all other alternatives considered.

Alternative B—Control of Non-Native Deer at Pre-Determined Levels by Agency Removal. Alternative B would focus on the use of lethal control to reduce the size of non-native deer populations. Culling would be conducted by NPS staff or contractors specifically trained in wildlife sharpshooting. Non-native deer populations would be maintained at a level of 350 for each species (700 total axis and fallow deer). Because fallow deer concentrations are currently higher than this, and axis deer populations are lower than this target, the focus of initial reductions would be on fallow deer. This target population level was chosen because of its history, and for management reasons. However, the number would be re-evaluated by resource managers regularly and could be changed based on results of ongoing monitoring programs. Efforts would be made to reach target levels in 15 years and to ensure continued unharmful presence of both species in the Seashore. Because fallow deer numbers currently exceed 350 animals, and axis deer have historically done so, any chosen population control method would need to be used in perpetuity to maintain each species at this population size. Because the management time frame is very long (theoretically lasting forever), the total numbers of deer lethally removed could be very high, and operational and monitoring costs would not be minimized.

Alternative C—Control of Non-Native Deer at Pre-Determined Levels by Agency Removal and Fertility Control. As in Alternative B, non-native deer populations would be maintained at a level of 350 for each species (700 total axis and fallow deer), but through a combination of lethal removals and fertility control. This target population level was chosen based on historical records and for management reasons. However, the targeted population number would be re-evaluated by resource managers regularly and could be changed based on results of ongoing monitoring programs and practical adaptive management. Culling would be conducted by NPS staff or contractors specifically trained in wildlife sharpshooting. The contraceptive program would be similar to that for Alternative E.

Because fallow deer numbers are currently higher than 350, and axis deer populations are lower than this target, the focus of initial reductions would be on fallow deer. Efforts would be made to reach target levels in 15 years. Because the goal of this alternative will be to control axis and fallow deer at a specified level and not to eradicate them from PRNS, annual culling and fertility control would continue indefinitely, and operational and monitoring costs would not be minimized. Because the management time frame is very long (theoretically lasting forever), the total numbers of deer removed and treated with contraceptives could also be very high under this alternative.

Alternative D—Removal of All Non-Native Deer by Agency Personnel. In Alternative D, all axis and fallow deer inhabiting PRNS and the GGNRA lands administered by the Seashore would be eradicated through lethal removal (shooting) by 2021 through annual shooting. Culling would be conducted by NPS staff or contractors specifically trained in wildlife sharpshooting. The management actions included in this alternative would continue until both species were extirpated, with a goal of full removal in a minimum of 13 years and no more than 20 years. In comparison to the alternatives that rely on contraception, Alternative D minimizes the overall total number of deer removed (a longer period of removal would mean more fawns are born and more total deer are killed), and is reasonable from a cost and logistics standpoint. Monitoring during program implementation would be done to assess program success and to guide adjustments in the location, intensity and logistics of removal.

Actions Common to All Alternatives—In order to ensure protection of native species and ecosystems and to assess success of any management program, continued monitoring for at least 15 years would be an integral part of any alternative chosen. Regardless of the alternatives selected, all actions involving direct management of individual animals, ranging from aerial surveillance to live capture and lethal removal, would be conducted in a manner which minimizes stress, pain and suffering to every extent possible. All actions occurring within desginated Wilderness, from monitoring to active deer management, would be consistent with the *minimum requirement* concept.

Summary of Public Engagement

On December 5, 2001, representatives of public agencies were invited to attend an informational meeting at the Seashore, with the objective of conferring with those agencies about updating the park's non-native deer management plan. On April 10, 2002, a Notice of Scoping was published in the **Federal Register** and in local newspapers. Public scoping comments were solicited at a public information meeting held at the Point Reyes Dance Palace on May 4, 2002. Written scoping comments were accepted through July 5, 2002. All those who sent written comments dfurign the scoping period and who gave a return mailing address were included in the NNDMP mailing list. During the February–July 2002 period, PRNS staff gave numerous presentations to local and state public groups on the NNDMP conservation planning process and provided background information on non-native deer. Audiences ranged from local homeowners and ranchers' associations to local branches of national environmental and animal rights groups.

The Draft EIS was made available for public review and comment for 63 days, from February 4, 2005 through April 8, 2005. Midway through the public comment period, on March 3, 2005, an informational meeting was held int he Red Barn Classroom at Seashore Headquarters. Approximately 60 people attended the 3-hour meeting and posed questions to a panel of scientists and staff or expressed their concerns and preferences regarding the plan and management alternatives. Audience members were informed of a number of ways to submit comments on the NNDMP either that night at the meeting, or by mail/e-mail by April 8, 2005. Some comment letters arrived past the end of the comment period (up to April 19, 2005) but were nontheless included as part of the public comment received. During the comment period, the NPS received a total of 1,980 peices of correspondence (including letters, e-mails, fascimiles, and hand-delivered comment forms), containing 4450 individual comments. Ninety-four percent of the comments were sent in by individual members of the public and the remainder were received from environmental, professional, and recreational groups, civic organizations, and government agencies. All comments were carefully reviewed, and responses to substantive comments were prepared

for inclusion in the FEIS. Where warranted, portions of the FEIS reflect edits to the Draft EIS text in response to salient recommendations from some commentors or to provide clarification in view of concerns brought up by the public. And as noted above, new studies and technical information not available prior to release of the Draft EIS are discussed. All comments received are included in the administrative record.

In conformance with Section 7 of the Endangered Species Act, on March 26, 2003, PRNS initiated the consultation process with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). On March 10, 2005, the park requested concurrence from USFWS with its finding that the proposed plan would be not likely to adversely affect nine plant and wildlife species or the proposed critical habitat for the California red-legged frog or adversely affect nine plant and animal species during implementation of the preferred alternative. On April 7, 2005, the USFWS concurred with the park's findings that measures in the proposed plan are sufficient to reduce any direct, indirect, and cumulative effects to the nine listed species and proposed critical habitat to an insignificant or discountable level. With the issuance of this memo, the USFWS concluded its consultation process for the NNDMP.

On March 28, 2005, PRNS transmitted a letter to the NMFS with regard to potential effects on listed anadromous fish species and fish habitat within the planning area. PRNS clarified that no proposed actions would take place in creeks, waterways, or riparian areas and therefore the proposed project is not likely to adversely affect central California coast environmentally significant unit (ESU) coho salmon, central California coast ESU steelhead, California coastal ESU Chinook salmon, Designated Critical Habitat for central California coast ESU coho salmon, or Essential Fish Habitat for coho salmon and Chinook salmon. NMFS concurred with the park's findings in a letter to the NPS on May 3, 2005, ending the information consultation process.

ADDRESSES: New requests for copies of the FEIS may be sent to the Superintendent, Attn: NNDMP, Point Reyes National Seashore, Point Reyes, CA 94956 (or by e-mail request to: *Ann_Nelson@nps.gov*—in the subject line, type: NNDMP). The document will be sent directly to those who received the DEIS or previously have requested it, and it is also available in electronic format at the NPS's Planning, Environment, and Public Comment Web site *http://parkplanning.nps.gov/pore*. Both the printed document and digital version on compact disk will be available at the park headquarters and local libraries. Any correspondence regarding the NNDMP should be addressed to the Superintendent either by mail or e-mail (see addresses above). Please note that names and addresses of all respondents will become part of the public record. It is the practice of the NPS to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials or organizations or businesses, available for public inspection in their entirety.

Decision

As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region. A Record of Decision, documenting the environmental decision-making process on the NNDMP will be prepared not sooner than 30 days following the publication in the **Federal Register** of the EPA's notice of filing and availability of the Final EIS. Subsequently and prior to implementation, notice of approval of the Record of Decision will be posted in the **Federal Register** and announced via local and regional news media. Following approval of the Non-Native Deer Management Plan, the official responsible for implementation will be the Superintendent, Point Reyes National Seashore.

Dated: April 7, 2006.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 06–6973 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–FW–M

DEPARTMENT OF THE INTERIOR

National Park Service

Landmarks Committee of the National Park System Advisory Board Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act and 36 CFR Part 65 that a meeting of the Landmarks Committee of the National Park System Advisory Board will be held beginning at 1 p.m. on October 10, 2006 and at the following location. The meeting will continue beginning at 9 a.m. on October 11.

DATES: October 10–11, 2006.

Location: The 2nd Floor Board Room of the National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Program, National Park Service; 1849 C Street, NW. (2280); Washington, DC 20240; Telephone (202) 354–2216.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the National Park System Advisory Board of the qualifications of each property being proposed for National Historic Landmark (NHL) designation, and to make recommendations regarding the possible designation of those properties as National Historic Landmarks to the National Park System Advisory Board, at its subsequent meeting at a place and time to be determined. The Committee also makes recommendations to the National Park System Advisory Board regarding amendments to existing designations, and proposals for withdrawal of designation. The members of the National Landmarks Committee are:

Dr. Larry E. Rivers, Chair,
Dr. James M. Allan,
Dr. Cary Carson,
Ms. Mary Werner DeNadai, FAIA,
Dr. Alferdteen Brown Harrison,
Mr. E. L. Roy Hunt, J.D.,
Mr. Ronald James,
Dr. William J. Murtagh,
Dr. William D. Seale,
Dr. Jo Anne Van Tilburg.

The meeting will be open to the public. Pursuant to 36 CFR Part 65, any member of the public may file, for

consideration by the National Park System Advisory Board and its Landmarks Committee, written comments concerning the National Historic Landmarks nominations, amendments to existing designations, or proposals for withdrawal of designation.

Comments should be submitted to John W. Roberts, Acting Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service; 1849 C Street, NW. (2280); Washington, DC 20240.

The National Park System Advisory Board and its Landmarks Committee may consider the following nominations:

Nominations

California

• Aline Barnsdall Complex (Hollyhock House), Los Angeles, CA

Connecticut

• Coltsville Historic District, Hartford, CT

Hawaii

• Washington Place, Honolulu, HI

Illinois

• Hegler-Carus Mansion, LaSalle, IL

Ohio

• Mariemont Historic District, Hamilton County, OH

• Spring Grove Cemetery, Cincinnati, OH

Massachusetts

• House Of The Seven Gables Historic District, Salem, MA

• Naumkeag, Stockbridge, MA

Missouri

• Field House, St. Louis, MO

Oklahoma

• Price Tower, Bartlesville, OK

Pennsylvania

• Beth Sholom Synagogue, Elkins Park, PA

South Carolina

• Fig Island Shell Rings, SC

Utah

• Central Utah Relocation Center (Topaz), Millard County, UT

Proposed Amendments to Existing Designations

• Beacon Hill Historic District, Boston, MA

August 11, 2006.

John W. Roberts,

Acting Chief, National Historic Landmarks Program; National Park Service, Washington, DC.

[FR Doc. E6–13552 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains were removed from along the Columbia River in Chelan County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Burke Museum professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington.

In 1966, human remains representing a minimum of three individuals were removed from 45–CH–201 along the Columbia River in Chelan County, WA. The human remains were collected under the direction of Brain Holmes as part of a field party of the University of Washington led by R.S. Kidd for the State of Washington Highway Survey Project. The human remains were accessioned by the Burke Museum in 1966 (Burke Accn. 1966–76). No known individuals were identified. No associated funerary objects are present. Stone debitage was noted on the site inventory form, but its whereabouts are unknown.

Based on archeological evidence, the human remains have been determined to be Native American. The skeletal morphology was indeterminate. Geographic affiliation is consistent with the historically documented territory of the Confederated Tribes of the Colville Reservation, Washington. The southern area of Lake Chelan was part of the aboriginal territory of the Chelan people. The Chelan spoke a Wenatchee dialect of the Interior Salish language. This area was incorporated into part of the Moses-Columbia Reservation in 1879. Descendants of the Chelan and Moses Columbia are members of the Confederated Tribes of the Colville Reservation, Washington.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before September 18, 2006. Repatriation of the human remains to the Confederated Tribes of the Colville Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington that this notice has been published.

Dated: July 24, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–13586 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains were removed from Judd Creek on Vashon Island, King County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations

in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Burke Museum and University of Washington professional staff in consultation with representatives of the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington and Puyallup Tribe of the Puyallup Reservation, Washington.

In 1951, human remains representing a minimum of one individual were removed from Vashon Island near Judd Creek in King County, WA, by landowner Vernon Lamoreux. The human remains were donated to the Burke Museum in 1951, but were not formally accessioned until 1965 (Burke Accn. #1965–78). No known individual was identified. No associated funerary objects are present.

Based on geographic location and after further review by a University of Washington physical anthropologist, the human remains have been determined to be Native American. Although the cranium is highly fragmented, morphological evidence such as the presence of wormian bones and cranial deformity typical of Native American remains is evident. Vashon Island is within the usual and accustomed territory of the Puyallup Tribe of the Puyallup Reservation, Washington. The S'Homamish occupied Vashon Island during the mid 1800s. In 1854, George Gibbs identified the Puyallupahmish, T'Kawkamish, and S'Homamish as being from the Puyallup River and Vashon Island area. Under the terms of the Treaty of Medicine Creek, the S'Homamish people were removed to the Puyallup Reservation. Descendants of the S'Homamish are members of the Puyallup Tribe of the Puyallup Reservation, Washington.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Puyallup Tribe of the Puyallup Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010], telephone (206) 685–2282, before September 18, 2006. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington, and Puyallup Tribe of the Puyallup Reservation, Washington that this notice has been published.

Dated: July 24, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–13603 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains were removed from Kettle Falls in Stevens County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Burke Museum professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington and Spokane Tribe of the Spokane Reservation, Washington.

In 1931, human remains representing a minimum of three individuals were removed from the east end of Kettle Falls state bridge in Stevens County, WA. The human remains were removed by Verne Ray who identified the burial as a ''Colville burial.'' Museum accession records do not state how this determination was made. The human remains were accessioned by the Burke Museum in 1931 (Burke Accession. #2562). No known individuals were identified. No associated funerary objects are present.

Based on the geographic and accession documentation, the preponderance of evidence demonstrates that the three individuals are of Native American ancestry. Kettle Falls has been a historically important center for fishing and trading for Native Americans (Ruby and Brown 1986:36). Kettle Falls is located within the aboriginal territory of the Confederated Tribes of the Colville Reservation, Washington. Early and late ethnographic sources identify Kettle Falls as an area associated with either the Colville or the Lakes tribes or bands (Kennedy and Bouchard 1998; Mooney 1896; Ray 1936; Spier 1936; Swanton 1952). Both the Colville and the Lakes tribes were part of the twelve tribes or bands that comprise the Confederated Tribes of the Colville Reservation, Washington. The Colville Reservation was created by Executive Order in 1872. Descendants of the Colville and Lakes tribes are members of the Confederated Tribes of the Colville Reservation, Washington.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before September 18, 2006. Repatriation of the human remains to the Confederated Tribes of the Colville Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington and Spokane Tribe of the Spokane Reservation, Washington that this notice has been published.

Dated: July 24, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–13604 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Colorado Museum, Boulder, CO. The human remains and associated funerary objects were removed from unknown sites in the Southwestern United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by University of Colorado Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Sometime in the 1920s, human remains representing a minimum of four individuals were removed from unknown sites in the Southwestern United States, most likely excavated by Earl H. Morris of the University of Colorado Museum, and cataloged into the museum collection (catalog numbers 04797–1, 04797–2, 04797–3, and 04797–4). No known individuals were identified. No associated funerary objects are present.

Based on the excavator and the collecting history of the museum, the human remains are reasonably believed to be Native American. Based on the excavator and the collecting history of the museum the human remains are reasonably believed to be Puebloan.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the Southwestern United States. In May 1961, they were purchased by the University of Colorado Museum from Gervis W. Hoofnagle and cataloged into the museum collection (catalog number 22237). No known individual was identified. No associated funerary objects are present.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the Southwestern United States. In May 1961, they were purchased by the University of Colorado Museum from Mr. Hoofnagle and cataloged into the museum collection (catalog number 22251). No known individual was identified. The one associated funerary object is a glass bead.

Based on Mr. Hoofnagle's notebook entries, the human remains are Native American. Based on Mr. Hoofnagle's notebook entries, the human remains are reasonably believed to be Puebloan.

On an unknown date, but sometime between 1915 and 1935, human remains representing a minimum of six individuals were removed from unknown sites in the Southwestern United States, by Mr. Morris of the University of Colorado Museum, and cataloged into the museum collection (catalog numbers 45219f–1 to 45219f–6). No known individuals were identified. No associated funerary objects are present.

In 1939, the six individuals collected by Mr. Morris were sent for analysis to the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. They were returned to the University of Colorado Museum in 1996. Based on the excavator and analysis during the loan to the Peabody Museum, the human remains are reasonably believed to be Native American and Puebloan.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the Southwestern United States, by an unknown person. In 1980, the human remains were donated to the museum by an unknown party and cataloged into the museum collection (catalog number 99138). The only information associated with the human remains is that they came from the Southwestern United States. No known individual was identified. No associated funerary objects are present.

Based on the acquisition date and circumstance, the human remains are reasonably believed to be Native American. Based on the provenience and museum's scope of collections, the human remains are reasonably believed to be Puebloan.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the Southwestern United States, by an unknown person. In 1993, the human remains were identified during an inventory of human remains and cataloged into the museum collection (catalog number 99096). The only information associated with the human remains is that they came from the Southwestern United States. They were probably transferred to the museum by another University of Colorado department for NAGPRA compliance. No known individual was identified. No associated funerary objects are present.

Based on provenience and the physical transfer probably for NAGPRA compliance, the human remains are reasonably believed to be Native American. Based on the provenience, the human remains are reasonably believed to be Puebloan.

On an unknown date, human remains representing a minimum of nine individuals were removed from an unknown site or sites in the Southwestern United States, by an unknown person or persons. In 2000–2001, the human remains were identified during an inventory of human remains in the museum and cataloged (catalog numbers 99500- 99508). The only information associated with the human remains is that they came from the Southwestern United States. They were probably transferred to the museum by another University of Colorado department for NAGPRA compliance. No known individuals were identified. No associated funerary objects are present.

Based on provenience and the physical transfer probably for NAGPRA

compliance, the human remains are reasonably believed to be Native American. Based on the provenience, the human remains are reasonably believed to be Puebloan.

All individuals listed in this Notice of Inventory Completion are reasonably believed to be Puebloan based on the provenience; acquisition and loan circumstances; history of the museum and excavator; museum's scope of collecting; and associated documentation. Based on a preponderance of evidence, a shared group identity can be traced between Puebloan peoples based on oral tradition, historical evidence, folklore, archeology, geography, linguistics, kinship, and scientific studies, and modern Puebloan groups. Modern Puebloan peoples are members of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico

Oral-tradition evidence, which consisted of migration stories, clan histories, and origin stories, was provided by the Hopi Tribe, Navajo Nation, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Pojoaque, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Ysleta del Sur Pueblo, and Zuni Tribe. Folkloric evidence in the form of songs was provided by tribal representatives of the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Nambe, and Pueblo of San Ildefonso. Tribal representatives of the Pueblo of Acoma, Pueblo of Nambe, Pueblo of San Ildefonso, and Pueblo of Taos provided linguistic evidence rooted in place names. Pueblo of Cochiti, Pueblo of Nambe, Pueblo of San Ildefonso, and Pueblo of Santa Clara provided archeological evidence based on architecture and material culture of their shared relationship. According to scientific studies and oral tradition, the Navajo share some cultural practices with modern Puebloan peoples; and during consultation, tribal representatives of the Navajo Nation emphasized their long presence in the Four Corners and their origin in this area, but there is not a preponderance of evidence to support Navajo cultural affiliation to the human remains described in this notice.

Officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 23 individuals of Native American ancestry. Officials of the University of Colorado Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, Henderson Building, Campus Box 218, Boulder, CO 80309–0218, telephone (303) 492–6671, before September 18, 2006. Repatriation of the human remains and associated funerary object to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The University of Colorado is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 24, 2006

Sherry Hutt

Manager, National NAGPRA Program

[FR Doc. E6–13584 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Colorado Museum, Boulder, CO. The human remains and associated funerary objects were removed from Dolores, La Plata, and Montezuma Counties, CO; San Juan County, NM; San Juan County,

UT; and an unknown site in the Southwestern United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by University of Colorado Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Prior to 1941, human remains representing a minimum of two individuals were removed from an unknown site close to Dove Creek, Dolores County, CO, by an unknown individual. The human remains were sent anonymously to the University of Colorado Museum in the early 1990s and cataloged into the museum collection (catalog numbers 99509a and 99509b). No known individuals were identified. No associated funerary objects are present.

Based on information sent to the museum with the human remains, including a statement that they are from an ''Indian'' site, the human remains are reasonably believed to be Native American. Based on the numerous late Basketmaker and Pueblo I-III sites in the Dove Creek area, there is a reasonable belief that the human remains date to circa A.D. 550–1300.

On an unknown date, but probably in 1925, human remains representing a minimum of six individuals were removed from the Morris site, La Plata Canyon, La Plata County, CO, by Earl H. Morris of the University of Colorado Museum, and cataloged into museum collections (catalog numbers 45219a to 45219d). No known individuals were identified. No associated funerary objects are present.

The human remains were removed from either Morris site number 19, 22, or 23. All three sites are in La Plata Canyon, 8 miles south of Red Mesa. Based on the osteological characteristics and excavator's collection history, the human remains are reasonably believed to be Native American. The osteological characteristics indicate the human remains are consistent with better-documented Ancestral Puebloan remains from Southwestern Colorado dating to the Pueblo I period (A.D. 750–900).

On an unknown date, human remains representing a minimum of one individual were removed from a site in Ridges Basin, La Plata County, CO, by an unknown individual. Ridges Basin is 6 miles southwest of Durango, CO, and west of the Animas River. The human remains were acquired by G.W. Hoofnagle in the 1950s, purchased from Mr. Hoofnagle by the University of Colorado Museum in 1961, and cataloged into the museum collection (catalog number 21815a). No known individual was identified. The three associated funerary objects are one Chapin Gray pitcher, one Chapin Gray seed jar, and one Rosa/La Plata Black-on-White bowl.

Ridges Basin is an area of extensive prehistoric occupation. Based on the site location and the associated funerary objects, the human remains are Native American. Based on the style of the associated funerary objects, the human remains are Pueblo I period (A.D. 750–900).

On an unknown date, human remains representing a minimum three individuals were removed from a site or sites near Durango, La Plata County, CO, by an unknown individual. The human remains are reasonably believed to have been excavated in the 1930s or 1940s. Harold Peterson donated the human remains to the museum in the early 1990s and the human remains were cataloged into the museum collection (catalog numbers 99092, 99093, and 99094). No known individuals were identified. No associated funerary objects are present.

Based on information on the provenience of at least two of the sites, which suggests they came from the Ridges Basin area close to Durango, the human remains are reasonably believed to be Native American dating to circa A.D. 750–900.

On an unknown date, human remains representing a minimum of four individuals were removed from an unknown site on the first terrace just above the Mancos River, Montezuma County, CO, by an unknown individual. In 1989, Fred W. Skinner donated the human remains to the University of Colorado Museum and the human remains were cataloged into the museum collection (catalog numbers 44447–1 to 44447–4). No known individuals were identified. No associated funerary objects are present.

Based on the site description by the donor, the human remains are reasonably believed to be Native American and are reasonably believed to be Ancestral Pueblo. Most pueblo ruins in the area date to circa A.D. 550–1300.

In 1914, human remains representing a minimum of one individual were removed from a site near Aztec Ruin, San Juan County, NM, by Mr. Morris. The human remains were donated to the museum by the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, and cataloged into the museum collection (catalog number 00235). No known individual was identified. No associated funerary objects are present.

Based on the archeological context, the human remains are Native American. Based on the proximity to the Aztec Ruin site, the human remains date to approximately A.D. 1100–1300.

In 1916, human remains representing a minimum of one individual were removed from Morris site number 39, located on the western river terrace just north of the junction of the La Plata River and Barker Arroyo in San Juan County, NM, by Mr. Morris of the University of Colorado. Mr. Morris's work was jointly financed by the University of Colorado Museum and the American Museum of Natural History. The collection from this expedition was later consolidated at the University of Colorado Museum through the reimbursement of the American Museum of Natural History in 1923 and were cataloged into the museum collection (catalog number 698). No known individual was identified. No associated funerary objects are present.

Morris site number 39 is a large Ancestral Puebloan Community. Based on archeological context, the human remains are Native American. Based on architecture and ceramics associated with Morris site number 39, the human remains are Ancestral Puebloan dating from circa A.D. 750–1300.

In 1898, human remains representing a minimum of one individual were removed from near Pueblo Pintado, near the mouth of Chaco Canyon, San Juan County, NM, by William Ross. Mr. Morris acquired the human remains from Mr. Ross. Sometime after 1910, the human remains were transferred to the museum where they were cataloged into the collection (catalog number 760). No known individual was identified. No associated funerary objects are present.

Pueblo Pintado is an ancestral Pueblo community. Based on the proximity to Pueblo Pintado and Chaco Canyon, the human remains are reasonably believed to be Native American. Based on the architecture and ceramics associated with Pueblo Pintado and Chaco Canyon, the human remains are reasonably believed to be Ancestral Puebloan. Chaco Canyon occupation dates to approximately A.D. 500–1300.

On an unknown date, human remains representing a minimum of two individuals were removed from Blake Ranch near Farmington, San Juan County, NM, by Mr. Morris of the University of Colorado and cataloged into the museum collection (catalog numbers 762–1 and 762–2). No known individuals were identified. No associated funerary objects are present.

Based on Mr. Morris' assessment of the human remains, they are reasonably believed to be Native American. Based on geographic location and mode of burial, the human remains are Ancestral Puebloan.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the Southwestern United States, by an unknown individual. According to museum documentation, a seed jar was found with the human remains. The human remains were cataloged into the museum collection (catalog number 22264), but the seed jar is not in the collection. No known individual was identified. No associated funerary objects are present.

Based on the association with the seed jar, the human remains are reasonably believed to be Native American. Based on the style of the associated funerary object, the human remains are Ancestral Puebloan dating to circa A.D. 750–1100.

Between 1937 and 1940, human remains representing a minimum of two individuals were removed from Monument Ruin (42SA22760), San Juan County, UT, by Leonard Leh, an assistant professor at the University of Colorado. The site had been purchased by Mr. Leh prior to excavation and may have worked as a private collector at the site. In 1956, Mr. Leh donated the human remains to the museum where they were cataloged into the museum collection (catalog numbers 6808, 6809, 6811, and 6812). No known individuals were identified. The two associated funerary objects are one Mesa Verde Black-on-white mug and one McElmo Black-on-White ladle.

Monument Ruin, also known as the Wilson Ruins or Hedley Site, is adjacent to a tributary of Monument Canyon near the Colorado-Utah border and consists of three separate village areas covering over a quarter section of land in total area. The human remains were found in the westernmost portion of the site, described in the site report as the West Hill Ruins. Based on the provenience, associated funerary objects, archeological context, and cranial shaping or cradleboarding, the human remains are Native American. Based on the style of architecture and ceramics at the site, the use of the portion of the site from which the human remains were removed dates to circa A.D. 1080–1240. Based on the style of ceramic vessels, the human remains date to approximately A.D. 1100–1225.

All individuals listed in this Notice of Inventory Completion are Ancestral Puebloan based on the archeological context, morphology, or site dating. Based on a preponderance of evidence, a shared group identity can be traced between modern Puebloan peoples and Ancestral Puebloan peoples based on oral tradition and scientific studies. Modern Puebloan peoples are members of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Oral-tradition evidence, which consisted of migration stories, clan histories, and origin stories was provided by the Hopi Tribe, Navajo Nation, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Pojoaque, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Ysleta del Sur, Pueblo of Zia, and Pueblo of Zuni. Folkloric evidence in the form of songs was provided by Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Nambe, and Pueblo of San Ildefonso. Pueblo of Acoma, Pueblo of Nambe, Pueblo of San Ildefonso, and Pueblo of Taos provided linguistic evidence rooted in place names. Pueblo of Cochiti, Pueblo of Nambe, Pueblo of San Ildefonso, and Pueblo of Santa Clara provided archeological evidence based on architecture and material culture.

According to scientific studies and oral tradition, the Navajo share some cultural practices with modern Puebloan peoples; and during consultation, tribal representatives of the Navajo Nation emphasized their long presence in the Four Corners and their origin in this area, but there is not a preponderance of evidence to support Navajo cultural affiliation to the human remains described in this notice.

Officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 24 individuals of Native American ancestry. Officials of the University of Colorado Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steve Lekson, Curator of

Anthropology, University of Colorado Museum, Henderson Building, Campus Box 218, Boulder, CO 80309–0218, telephone (303) 492–6671, before September 18, 2006. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Dated: July 24, 2006

Sherry Hutt

Manager, National NAGPRA Program

[FR Doc. 06–13602 Filed 8–16–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Second Review)]

Canned Pineapple Fruit From Thailand

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on canned pineapple fruit from Thailand.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review 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 order on canned pineapple fruit from Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review 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).

EFFECTIVE DATE: July 7, 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On July 7, 2006, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (71 FR 16585, April 3, 2006) were adequate. 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: This review is 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: August 14, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–13598 Filed 8–16–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–702 (Second Review); Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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:* August 4, 2006.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), 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 this review may be viewed on the

Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background: On August 4, 2006, the Commission determined that the domestic interested party group response to its notice of institution (71 FR 25609, May 1, 2006) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report: A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 30, 2006, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions: As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 5, 2006, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 5, 2006. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is 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: August 14, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–13596 Filed 8–16–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2006 Senior Executive service (SES) Standing Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals, bonus recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Rod Markham, Deputy Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Acting Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

BAILEY, GREGG D	ASSISTANT DIRECTOR (SCIENCE AND TECHNOLOGY/CHIEF INFORMATION OFFICER).
BARAN, VIVIAN A	DEPUTY ASSISTANT DIRECTOR (OFFICE OF MANAGEMENT).
BARRERA, HUGO	DEPUTY ASSISTANT DIRECTOR (OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION).
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CARROLL, CARSON W	DEPUTY ASSISTANT DIRECTOR (FIELD OPERATIONS CENTRAL).
CARTER, DONNIE A	SPECIAL AGENT IN CHARGE (HOUSTON FIELD DIVISION).
CARTER, RONNIE A	SPECIAL AGENT IN CHARGE (DALLAS FIELD DIVISION).
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DOMENECH, EDGAR AXEL	DEPUTY DIRECTOR.
ETHRIDGE, MICHAEL W	DIRECTOR (LABORATORY SERVICES).
FORD, WILFRED L	ASSISTANT DIRECTOR (PUBLIC AND GOVERNMENTAL AFFAIRS).
HARRIS, GREGORY PAUL	CHIEF OF STAFF.
HOOVER, WILLIAM	SPECIAL AGENT IN CHARGE (WASHINGTON FIELD DIVISION DIRECTOR).
KOETT, IMELDA M	DEPUTY CHIEF COUNSEL.

[1] 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.

[2] Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun concluded that the domestic group response for this review was adequate and the respondent group response was inadequate, but that circumstances warranted a full review.

[3] The Commission has found the responses submitted by Bear Metallurgical Co., Gulf Chemical & Metallurgical Corp., Metallurg Vanadium Corp., and The Vanadium Producers and Reclaimers Association to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE—Continued

LOGAN, MARK	ASSISTANT DIRECTOR (TRAINING AND PROFESSIONAL DEVELOPMENT).
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STUCKO, AUDREY	DEPUTY ASSISTANT DIRECTOR (ENFORCEMENT PROGRAM AND SERVICES).
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GIORDANO, RALPH T	CHIEF, NEW YORK FIELD OFFICE.
GOODMAN, NANCY M	CHIEF, TELECOMMUNICATIONS AND MEDIA SECTION.
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HAND, EDWARD T	CHIEF, FOREIGN COMMERCE SECTION.
HEYER, KENNETH	DIRECTOR OF ECONOMICS.
KING, THOMAS D	EXECUTIVE OFFICER.
KRAMER II, J. ROBERT	DIRECTOR OF OPERATIONS.
KURSH, GAIL	DEPUTY DIRECTOR, LEGAL POLICY.
MAJURE, WILLIAM R	CHIEF, COMPETITION SECTION.
MASOUDI, GERALD F	DEPUTY ASSISTANT ATTORNEY GENERAL.
MCDONALD, JOHN B	DEPUTY ASSISTANT ATTORNEY GENERAL.
MEYER, DAVID L	DEPUTY ASSISTANT ATTORNEY GENERAL.
O SULLIVAN, CATHERINE G	CHIEF, APPELLATE SECTION.
PETRIZZI, MARIBETH	CHIEF, LITIGATION II SECTION.
PHELAN, LISA M	CHIEF, NATIONAL CRIMINAL ENFORCEMENT SECTION.
POTTER, ROBERT A	CHIEF, LEGAL POLICY SECTION.
PRICE JR, MARVIN N	CHIEF, CHICAGO FIELD OFFICE.
READ, JOHN R	CHIEF, LITIGATION III.
WARREN, PHILLIP H	CHIEF, SAN FRANCISCO FIELD OFFICE.
WATSON, SCOTT M	CHIEF, CLEVELAND FIELD OFFICE.

BUREAU OF PRISONS

ADAMS, VANESSA P	WARDEN, PETERSBURG, VIRGINIA.
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APKER JR, LIONEL C	WARDEN, OTISVILLE, NEW YORK.
BEELER JR, ARTHUR F	WARDEN, BUTNER, NORTH CAROLINA.
BENOV, MICHAEL L	SENIOR WARDEN, LOS ANGELES, CALIFORNIA.
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BOOKER, JOE W	WARDEN, PHOENIX, ARIZONA.
CHEVEZ, RICARDO E	WADEN, TUCSON, ARIZONA.
COMPTON, BOBBY G	WARDEN, LOMPOS, CALIFORNIA.
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DANIELS, CHARLES	WARDEN, SHERIDAN, OREGON.
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DODRILL, D. SCOTT	REGIONAL DIRECTOR, NORTHEAST REGION.
DREW, DARRYL	WARDEN TALLADEGA, ALABAMA.
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FRANCIS, JOYCE	WARDEN, GILMER, WEST VIRGINIA.
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HAYNES, ALFONSO	WARDEN, HAZELTON, WEST VIRGINIA.
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SMITH, DENNIS	WARDEN, ATWATER, CALIFORNIA.
STANSBERRY, PATRICIA RAY	WARDEN, BUTNER, NORTH CAROLINA.
STINE, DONALD L	WARDEN, MCCREARY, KENTUCKY.
TERRELL, DUDLEY J	WARDEN, LEAVENWORTH, KANSAS.
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FROST, PETER F	BRANCH DIRECTOR (TORTS).
GARREN, TIMOTHY PATRICK	BRANCH DIRECTOR (TORTS).
GARVEY, VINCENT MORGAN	DEPUTY BRANCH DIRECTOR (FEDERAL PROGRAMS).
GLYNN, JOHN PATRICK	BRANCH DIRECTOR (TORTS).
HERTZ, MICHAEL F	BRANCH DIRECTOR (COMMERCIAL).
HOLLIS, ROBERT MARK	OFFICE DIRECTOR (SPECIAL LITIGATION COUNSEL).
HUNT, JOSEPH H	BRANCH DIRECTOR (FEDERAL PROGRAMS).
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KLINE, DAVID J	DEPUTY BRANCH DIRECTOR (OIL).
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KILLION, MAUREEN H	SENIOR ASSOCIATE DIRECTOR.
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MCHENRY, TERESA L	CHIEF, DOMESTIC SECURITY SECTION.
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OHR, BRUCE G	CHIEF, ORGANIZED CRIME & RACKETEERING SECTION.
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ROGERS, RICHARD M	SENIOR COUNSEL TO THE ASSISTANT ATTORNEY.
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BECKER, GRACE CHUNG	DEPUTY ASSISTANT ATTORNEY GENERAL.
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GREENE, IRVA D	EXECUTIVE OFFICER.
KAPPLEHOFF, MARK JOHN	CHIEF, CRIMINAL SECTION.
KING, LORETTA	DEPUTY ASSISTANT ATTORNEY GENERAL.
PALMER, DAVID J	CHIEF, EMPLOYMENT LITIGATION SECTION.
ROSENBAUM, STEVEN H	CHIEF, HOUSING AND CIVIL ENFORCEMENT.
SCHLOZMAN, BRADLEY J	DEPUTY ASSISTANT ATTORNEY GENERAL.
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DEPARTMENT OF JUSTICE—Continued

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KILBOURNE, JAMES C	CHIEF, APPELLATE SECTION.
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SCIALABBA, LORI L	CHAIRMAN, BOARD OF IMMIGRATION APPEALS.

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DOWNS, DAVID W	DEPUTY DIRECTOR FOR OPERATIONS.
PARENT, STEVEN J	DEPUTY DIRECTOR.

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DESSEY, BLANE K	DIRECTOR, LIBRARY STAFF.
DUFFY, MICHAEL D	DIRECTOR, E-GOVERNMENT SERVICES STAFF.
DUNLAP, JAMES L	DIRECTOR, SECURITY AND EMERGENCY PLANNING STAFF.
FRISCH, STUART	GENERAL COUNSEL.
HAGGERTY, KATHLEEN A	DIRECTOR, DEBT COLECTION MANAGEMENT STAFF.
HERETICK, DENNIS J	DIRECTOR, INFORMATION SECURITY STAFF.
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LOFTHUS, LEE J	DEPUTY ASSISTANT ATTORNEY GENERAL/CONTROLLER.
MARKHAM, RODNEY E	DEPUTY DIRECTOR, PERSONNEL STAFF.
MORGAN, MELINDA B	DIRECTOR, FINANCE STAFF.
MURRAY, JOHN W	DIRECTOR, ENTERPRISE SOLUTIONS STAFF.
O LEARY, KARIN	DEPUTY DIRECTOR (PROGRAMS AND PERFORMANCE), BUDGET STAFF.
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DEPARTMENT OF JUSTICE—Continued

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FRIEDRICH, MATTHEW	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL AND CHIEF OF STAFF.
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JEZIERSKI, CRYSTAL R	DIRECTOR.
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BRADLEY, MARK A	DEPUTY COUNSEL FOR INTELLIGENCE POLICY.
KENNEDY, JOHN LIONEL	DEPUTY COUNSEL FOR INTELLIGENCE LAW.
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FRALICK, GERALD L	CHIEF INFORMATION OFFICER.
GARRY, EILEEN	DEPUTY DIRECTOR FOR PROGRAMS, BUREAU OF JUSTICE ASSISTANCE.
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MERKLE, PHILLIP	DIRECTOR, OFFICE OF ADMINISTRATION.
MORGAN, JOHN S	DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY.
ROBERTS, MARILYN M	DEPUTY DIRECTOR PROGRAMS, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

DEPARTMENT OF JUSTICE—Continued

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SEIDEL, REBECCA S	DEPUTY ASSISTANT ATTORNEY GENERAL.
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BRADBURY, STEVEN G	DEPUTY ASSISTANT ATTORNEY GENERAL.
COLBORN, PAUL P	SPECIAL COUNSEL.
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OFFICE OF LEGAL POLICY	
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OFFICE OF THE PARDON ATTORNEY	
ADAMS. ROGER C	PARDON ATTORNEY.
OFFICE OF PROFESSIONAL RESPONSIBILITY	
JARRETT, H. MARSHALL	COUNSEL ON PROFESSIONAL RESPONSIBILITY.
WISH, JUDITH B	DEPUTY COUNSEL ON PROFESSIONAL RESPONSIBILITY.
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DREEBEN, MICHAEL R	DEPUTY SOLICITOR GENERAL.
GARRE, GREGORY G	PRINCIPAL DEPUTY SOLICITOR GENERAL.
HUNGAR, THOMAS G	DEPUTY SOLICITOR GENERAL.
KNEEDLER, EDWIN S	DEPUTY SOLICITOR GENERAL.
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BOTTNER, ANDREA G	PRINCIPAL DEPUTY DIRECTOR, OFFICE OF VIOLENCE AGAINST WOMEN.
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DONOHUE, DENNIS M	SENIOR LITIGATION COUNSEL.
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HECHTKOPF, ALAN	CHIEF, CRIMINAL APPEALS AND TAX ENFORCEMENT POLICY SECTION.
HUBBERT, DAVID A	CHIEF, CIVIL TRIAL SECTION, EASTERN REGION.
HYTKEN, LOUISE P	CHIEF, CIVIL TRIAL SECTION, SOUTHWEST REGION.
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PAGUNI, ROSEMARY E	CHIEF, CRIMINAL ENFORCEMENT SECTION, NORTHERN REGION.
ROTHENBERG, GILBERT S	CHIEF, APPELLATE SECTION.
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WATKINS, ROBERT S	CHIEF, CIVIL TRIAL SECTION WESTERN REGION.
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BROWN, BROADINE M	ASSISTANT DIRECTOR FOR MANAGEMENT AND BUDGET.
DOLAN, EDWARD	CHIEF FINANCIAL OFFICER.

DEPARTMENT OF JUSTICE—Continued

FARMER, MARC A	ASSISTANT DIRECTOR FOR JUDICIAL SECURITY.
FINAN II, ROBERT J	ASSISTANT DIRECTOR FOR INVESTIGATIVE SERVICES.
JONES, SYLVESTER E	ASSISTANT DIRECTOR FOR WITNESS SECURITY AND PRISONER OPERATIONS.
LITMAN, DIANE C	ASSISTANT DIRECTOR FOR INFORMATION TECHNOLOGY.
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PEARSON, MICHAEL A	ASSISTANT DIRECTOR FOR EXECUTIVE SERVICES.
RODERICK JR, ARTHUR D	ASSISTANT DIRECTOR FOR OPERATIONS SUPPORT.
SMITH, SUZANNE D	ASSISTANT DIRECTOR OF HUMAN RESOURCES.
TRONO, ROBERT	DEPUTY DIRECTOR.

[FR Doc. 06–6977 Filed 8–16–06; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), 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 insure 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 on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the collection of administrative and survey data on the Growing America Through Entrepreneurship project 1205–0444, expires December 31, 2006). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice or at this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 16, 2006.

ADDRESSES: Jonathan Simonetta, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–3911 (this is not a toll-free number); fax: 202–693–2766 (this is not a toll-free number), or e-mail *Simonetta.Jonathan@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Many individuals have the motivation and skills to develop small businesses but lack business expertise and/or access to financing. Recognizing this untapped potential, ETA is teaming with the Small Business Administration (SBA) to create a demonstration program designed to assist individuals interested in self-employment to develop their businesses—Project GATE (Growing America Through Entrepreneurship). In helping people develop businesses, Project GATE promotes both workforce and economic development. The effectiveness of the program is being evaluated.

Entrepreneurial services provided by Project GATE include an assessment, a structured training course, and technical assistance provided by a trained counselor. As part of the technical assistance, counselors assist individuals in need of financing to apply for loans from SBA's Microloan program and other funding sources. DOL's One-Stop Centers conduct Project GATE orientations where interested individuals will be informed about the services available at the One-Stop Center, the benefits and challenges of self-employment and the services offered through Project GATE. Small Business Development Center (SBDC) counselors conduct individual assessments and identify the most appropriate training course for each Project GATE participant. Existing entrepreneurial training providers in the community provide training and technical assistance.

DOL's One-Stop Centers play a central role in recruiting for the project. Interested individuals register for an orientation to Project GATE at One-Stop Centers as well as via telephone, mail, or a Web site. The orientations are held at the One-Stop Centers.

Eligibility for Project GATE is broad—it is designed to serve almost anyone interested in starting a business. Special attention is paid, however, to recruiting immigrant populations.

Project GATE is being evaluated using an experimental design. Individuals who submit an application for Project GATE in each site and who meet minimal eligibility criteria are randomly assigned to either a program group or a control group. Members of the program group are eligible to receive Project GATE services, while members of the control group are not eligible to receive Project GATE services, although they are not prohibited from receiving self-employment services from other sources.

GATE is implemented in seven sites-three urban and four rural sites. The three urban sites are in Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Minneapolis-St. Paul, Minnesota. The rural sites are one in Minnesota centered around Duluth, and three in Maine centered around Portland, Bangor, and Lewiston.

The evaluation addresses three key questions:

1. Is Project GATE Viable? What are the challenges in implementing the program? Does an interagency model for the program work? Who participates in GATE? Is the outreach effective in reaching immigrants? How does the implementation of the program vary across sites?

2. Does the Program Work? Does the program increase self-employment, increase employment and earnings, and reduce the receipt of unemployment insurance and public assistance? Does the program promote employment and other economic development? Is it effective in both rural and urban areas? Does the effectiveness of the program vary by population subgroup?

Is the Program Cost-Effective? Do the benefits of the program exceed its costs? Addressing these questions involve conducting process, impact, and benefit-cost analyses. The process evaluation is based on information collected during three rounds of visits to each site, during which detailed information is

collected on the implementation of the program from interviews with program staff, observations of services, and focus groups with program participants. Data also is collected using a Participant Tracking System developed specifically for the study. The impact evaluation involves comparing outcomes of members of the program group with outcomes of members of the control group. Data on these outcomes is collected from Unemployment Insurance (UI) benefit records and quarterly wage records, and two follow-up surveys that occur approximately 6 months and 18 months after random assignment. The benefit-cost analysis involves placing a dollar value on all impacts of the program and comparing them with the dollar value of the costs.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of ETA, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a notice to extend the collection period that is currently approved by OMB (1205–0444 expires December 31, 2006).

The data for the impact analysis comes from UI benefits and wage records in the three states, a computer-based Participant Tracking System developed for the demonstration and used in the seven sites, and follow-up surveys conducted twice with the expected sample of 4,000 individuals who apply for Project GATE. The follow-up surveys, which are the subject of this notice, are conducted by telephone approximately 6 and 18 months following the GATE application. These voluntary surveys collect data unavailable from administrative records. The first survey is designed to collect detailed information about sample members' participation and experiences in receiving self-employment services, their experiences starting a business, their experiences in jobs working for someone else, their receipt of public assistance, and some background data on their socio-economic and demographic characteristics. The second survey is designed to collect their experiences in self-employment and developing small businesses, their experiences in jobs working for someone else, and their income and receipt of public assistance.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Partnership for Self-Sufficiency: Growing America Through Entrepreneurship (GATE).

OMB Number: 1205–0444.

Affected Public: Individuals of households.

Total Respondents: 400.

Estimated Total Burden Hours: 267.

	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden (hours)
GATE 18-month follow-up survey (in 2007)	400	Once	400	40	267
Totals	400	Once	400	40	267

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information request; they will also become a matter of public record.

Dated: August 11, 2006.

Maria K. Flynn,

Administrator, Office of Policy Development and Research.

[FR Doc. E6–13566 Filed 8–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of MET Laboratories, Inc., for expansion of its recognition to use additional test standards, and presents the Agency's preliminary finding to grant this request for expansion. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* postmarked or sent by September 1, 2006.
- *Electronic transmission or facsimile:* sent by September 1, 2006.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL1–88—by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OSHA Web site: http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.
- *Fax:* If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- *Regular mail, express delivery, hand delivery and courier service:* Submit three copies to the OSHA Docket Office, Docket No. NRTL1–88, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone

(202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov,* including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210. Or, fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that MET Laboratories, Inc. (MET) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion request covers the use of additional test standards. OSHA's current scope of recognition for MET may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA specifically related to MET's recognition granted an expansion of its NRTL scope, which became effective on December 5, 2005 (70 FR 72470).

The current address of the MET facility already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, MD 21230.

General Background on the Application

MET has submitted an application, dated August 23, 2005 (see Exhibit 39–1) to expand its recognition to include 10 additional test standards. MET later amended its application through a follow-up request to add 10 more test standards (see Exhibit 39–2). The NRTL Program staff has determined that each of these 20 standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). However, one standard is already included in MET's scope. Therefore, OSHA would approve 19 test standards for the expansion.

MET seeks recognition for testing and certification of products for demonstration of conformance to the following test standards:

UL 82 Electric Gardening Appliances
UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
UL 298 Portable Electric Hand Lamps
UL 588 Seasonal and Holiday Decorative Products
UL 867 Electrostatic Air Cleaners
UL 917 Clock-Operated Switches
UL 987 Stationary and Fixed Electric Tools
UL 1081 Swimming Pool Pumps, Filters, and Chlorinators
UL1090 Electric Snow Movers
UL 1363 Relocatable Power Taps
UL 1447 Electric Lawn Mowers
UL 1448 Electrical Hedge Trimmers
UL 1450 Motor-Operated Air Compressors, Vacuum Pumps, and Painting Equipment
UL 1559 Insect-Control Equipment—Electrocution Type
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
UL 1662 Electric Chain Saws
UL 1776 High-Pressure Cleaning Machines
UL 1994 Luminous Egress Path Marking Systems
UL 2089 Vehicle Battery Adapters

OSHA's scope of recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA requires third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Many UL test standards are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our policy, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

MET has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of MET's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that MET's recognition be expanded to include the additional test standards listed above (see Exhibit 39–3). Our review of the application file, the assessor's recommendation, and other pertinent documents indicate that MET can meet the requirements, as prescribed by 29 CFR 1910.7, for expansion of its scope to include the additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether MET has

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (*i.e.*, the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of MET's requests, the on-site review report, other pertinent documents, and all submitted comments, as received, by contacting the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–88 contains all materials in the record concerning MET's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant MET's expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 9th day of August, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary.

[FR Doc. E6–13549 Filed 8–16–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–98]

National Technical Systems, Inc.; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of National Technical Systems, Inc., (NTS) for renewal of its recognition, and presents the Agency's preliminary finding to grant this request. This preliminary finding does not constitute an interim or temporary approval of the renewal application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* postmarked or sent by September 1, 2006.
- *Electronic transmission or facsimile:* sent by September 1, 2006.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL1–98—by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OSHA Web site: http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.
- *Fax:* If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- *Regular mail, express delivery, hand delivery and courier service:* Submit three copies to the OSHA Docket Office, Docket No. NRTL1–98, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210. or, fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Renewal Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that National Technical Systems, Inc., (NTS) has applied for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL). The NTS renewal request covers its existing scope of recognition. OSHA's current scope of recognition for NTS may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/nts.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified''[1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA specifically related to the NTS recognition granted its NRTL status, which became effective as noted below. However, OSHA issued a notice to modify the scope of a number of NRTLs to replace or delete withdrawn test standards (70 FR 11273, March 8, 2005). NTS was one of those NRTLs.

The current address of the NTS facility already recognized by OSHA is: National Technical Systems, Inc., 1146

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (*i.e.,* the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

Massachusetts Avenue, Boxborough, MA 01719.

General Background on the Renewal Application

National Technical Systems, Inc., (NTS) initially received OSHA recognition as a Nationally Recognized Testing Laboratory on December 10, 1998 (63 FR 68306) for a five-year period ending on December 10, 2003. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. NRTLs submitting requests within this allotted time period retain their recognition during OSHA's renewal process. NTS has submitted a request, dated February 13, 2003 (see Exhibit 7), to renew its recognition, within the allotted time period, and retains its recognition pending OSHA's final decision in this renewal process. In connection with the renewal, OSHA staff performed an on-site visit of the NRTL's site in January 2005. Based on this visit, the staff recommended renewal of the NTS recognition in the on-site review report dated July 22, 2005 (see Exhibit 7–1). The NTS existing scope of recognition consists of the facility listed above, and the test standards and supplemental programs listed below. OSHA deferred processing of the renewal request due to certain changes the NRTL considered making to its operations, but processing of the request also has been delayed through no fault of the NRTL.

NTS seeks renewal of its recognition for the one site that OSHA currently includes within the NRTL's scope. NTS also seeks renewal of its recognition for continued testing and certification of products for demonstration of conformance to the following test standards.

UL 484 Room Air Conditioners
UL 489 Molded-Case Circuit Breakers, Molded-Case Switches, and Circuit-Breaker Enclosures
UL 499 Electric Heating Appliances
UL 544 Medical and Dental Equipment
UL 1012 Power Units Other Than Class 2
UL 1778 Uninterruptible Power Systems
UL 1863 Communications-Circuit Accessories
UL 1995 Heating and Cooling Equipment
UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 60950 Information Technology Equipment—Safety—Part 1: General Requirements
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of NTS, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Programs and Procedures

The renewal would include continued use by NTS of supplemental programs 4, 8, and 9.

Program 4: Acceptance of witnessed testing data.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

In developing these programs, OSHA responded to industry requests and allowed certain of their ongoing practices to continue but in a manner controlled by OSHA criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Preliminary Finding on the Renewal

NTS has submitted an acceptable request for renewal of its recognition as an NRTL. Our review of the application file, the on-site review report, and other pertinent documents, indicates that NTS can meet the requirements, as prescribed by 29 CFR 1910.7, for the renewal of the one site and the test standards and programs listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether NTS has met the requirements of 29 CFR 1910.7 for the renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of the NTS request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–98 contains all materials in the record concerning the NTS application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the NTS renewal request. The Assistant Secretary will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 9th day of August, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary.

[FR Doc. E6–13542 Filed 8–16–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–93]

Wyle Laboratories, Inc.; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Wyle Laboratories, Inc. (WL) for renewal of its recognition and presents the Agency's preliminary finding to grant this request for renewal. This preliminary finding does not constitute an interim or temporary approval of the renewal application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* postmarked or sent by September 1, 2006.
- *Electronic transmission or facsimile:* sent by September 1, 2006.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL1–93—by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OSHA Web site: http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.
- *Fax:* If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- *Regular mail, express delivery, hand delivery and courier service:* Submit three copies to the OSHA Docket Office, Docket No. NRTL1–93, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov,* including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Renewal Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Wyle Laboratories, Inc. (WL) has applied for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL). The WL renewal request covers its existing scope of recognition, except as noted below. OSHA's current scope of recognition for WL may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/wl.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA specifically related to WL recognition granted renewal of its NRTL status, which became effective as noted below. However, OSHA issued a notice to modify the scope of a number of NRTLs to replace or delete withdrawn test standards (70 FR 11273, March 8, 2005). WL was one of those NRTLs.

The current address of the WL facility already recognized by OSHA is: Wyle Laboratories, Inc., 7800 Highway 20 West, P.O. Box 077777, Huntsville, AL 35807.

General Background on the Renewal Application

Wyle Laboratories, Inc. (WL) initially received OSHA recognition as a Nationally Recognized Testing Laboratory on July 22, 1994 (59 FR 37509) for a five-year period ending on July 22, 1999. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. NRTLs submitting requests within this allotted time period retain their recognition during OSHA's renewal process. WL submitted the required request and received its first renewal of recognition on June 28, 2000 (65 FR 39949), for the five-year period ending June 28, 2005. Wyle has submitted a request dated September 17, 2004 (see Exhibit 19–1) to renew its recognition again. This request falls within the allotted time period, and Wyle retains its recognition pending OSHA's final decision in this renewal process. WL later amended its request to delete certain test standards from its scope (see Exhibit 19–2), which have not been included in the listing of test standards shown below. In connection with the renewal, OSHA staff performed an on-site visit of the NRTL's site in February 2005. Based upon the on-site visit, the assessor recommended renewal of the WL recognition in a memo dated February 1, 2006 (see Exhibit 19–3). Processing of the renewal request has been delayed through no fault of the NRTL.

WL seeks renewal of its recognition for the one site that OSHA currently

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (*i.e.*, the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

UL 44 Thermoset-Insulated Wires and Cables
UL 45 Portable Electric Tools
UL 48 Electric Signs
UL 62 Flexible Cord and Fixture Wire
UL 65 Wired Cabinets
UL 67 Panelboards
UL 73 Motor-Operated Appliances
UL 83 Thermoplastic-Insulated Wires and Cables
UL 92 Fire Extinguisher and Booster Hose
UL 98 Enclosed and Dead-Front Switches
UL 153 Portable Electric Luminaires
UL 154 Carbon-Dioxide Fire Extinguishers
UL 187 X-Ray Equipment
UL 244A Solid-State Controls for Appliances
UL 299 Dry Chemical Fire Extinguishers
UL 363 Knife Switches
UL 393 Indicating Pressure Gauges for Fire-Protection Service
UL 429 Electrically Operated Valves
UL 444 Communications Cables
UL 466 Electric Scales
UL 467 Grounding and Bonding Equipment
UL 484 Room Air Conditioners
UL 486B Wire Connectors
UL 486C Splicing Wire Connectors
UL 486D Sealed Wire Connector Systems
UL 489 Molded-Case Circuit Breakers, Molded-Case Switches, and Circuit-Breaker Enclosures
UL 497A Secondary Protectors for Communications Circuits
UL 498 Attachment Plugs and Receptacles
UL 499 Electric Heating Appliances
UL 506 Specialty Transformers
UL 507 Electric Fans
UL 508 Industrial Control Equipment
UL 510 Polyvinyl Chloride, Polyethylene and Rubber Insulating Tape
UL 512 Fuseholders
UL 539 Single and Multiple Station Heat Alarms
UL 541 Refrigerated Vending Machines
UL 544 Medical and Dental Equipment
UL 626 Water Fire Extinguishers
UL 711 Rating and Fire Testing of Fire Extinguishers
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 796 Printed-Wiring Boards
UL 813 Commercial Audio Equipment
UL 817 Cord Sets and Power-Supply Cords
UL 845 Motor Control Centers
UL 854 Service-Entrance Cables
UL 863 Time-Indicating and -Recording Appliances
UL 916 Energy Management Equipment
UL 917 Clock-Operated Switches
UL 924 Emergency Lighting and Power Equipment
UL 943 Ground-Fault Circuit-Interrupters
UL 961 Electric Hobby and Sports Equipment
UL 977 Fused Power-Circuit Devices
UL 998 Humidifiers
UL 1004 Electric Motors
UL 1008 Transfer Switch Equipment
UL 1012 Power Units Other Than Class 2
UL 1018 Electric Aquarium Equipment
UL 1022 Line Isolation Monitors
UL 1028 Hair Clipping and Shaving Appliances
UL 1047 Isolated Power Systems Equipment
UL 1053 Ground-Fault Sensing and Relaying Equipment
UL 1054 Special-Use Switches
UL 1058 Halogenated Agent Extinguishing System Units
UL 1059 Terminal Blocks
UL 1066 Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
UL 1069 Hospital Signaling and Nurse-Call Equipment
UL 1077 Supplementary Protectors for Use in Electrical Equipment
UL 1091 Butterfly Valves for Fire-Protection Service
UL 1093 Halogenated Agent Fire Extinguishers
UL 1097 Double Insulation Systems for Use in Electrical Equipment
UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1254 Pre-Engineered Dry Chemical Extinguishing System Units
UL 1283 Electromagnetic Interference Filters
UL 1310 Class 2 Power Units
UL 1411 Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
UL 1424 Cables for Power-Limited Fire-Alarm Circuits
UL 1429 Pullout Switches
UL 1437 Electrical Analog Instruments—Panel Board Types
UL 1449 Transient Voltage Surge Suppressors
UL 1474 Adjustable Drop Nipples for Sprinkler Systems
UL 1481 Power Supplies for Fire-Protective Signaling Systems
UL 1486 Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1557 Electrically Isolated Semiconductor Devices
UL 1564 Industrial Battery Chargers
UL 1577 Optical Isolators
UL 1585 Class 2 and Class 3 Transformers
UL 1598 Luminaires
UL 1664 Immersion-Detection Circuit-Interrupters
UL 1673 Electric Space Heating Cables
UL 1682 Plugs, Receptacles, and Cable Connectors of the Pin and Sleeve Type
UL 1778 Uninterruptible Power Systems
UL 1863 Communications-Circuit Accessories
UL 1876 Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1995 Heating and Cooling Equipment
UL 2006 Halon 1211 Recovery/Recharge Equipment
UL 2111 Overheating Protection for Motors
UL 60950 Information Technology Equipment

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements *

UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of WL, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Programs and Procedures

The renewal would include continued use by WL of the following supplemental programs, all of which are currently in its scope.

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

In developing these programs, OSHA responded to industry requests and allowed certain of their ongoing practices to continue but in a manner controlled by OSHA criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Preliminary Finding on the Renewal

WL has submitted an acceptable request for renewal of its recognition as an NRTL. Our review of the application file, the assessor's memo, and other pertinent documents, indicates that WL can meet the requirements, as prescribed by 29 CFR 1910.7, for the renewal of the one site and the test standards and programs listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether WL has met the requirements of 29 CFR 1910.7 for the renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of the Wyle request, the on-site review report, other pertinent documents, and all submitted comments, as received, by contacting the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–93 contains all materials in the record concerning the WL application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the WL renewal request. The Assistant Secretary will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 9th day of August, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary.

[FR Doc. E6–13543 Filed 8–16–06; 8:45 am]

BILLING CODE 4510–26–P

* This standard is not presently in WL's scope of recognition but is comparable to UL 1262 Laboratory Equipment, which is in WL's scope but has been withdrawn by the standards developing organization. OSHA must delete a withdrawn standard from the scope of recognition of any NRTL because, once it has been withdrawn, a standard no longer meets the requirements for an ''appropriate test standard'' under 29 CFR 1910.7(c). In such cases, OSHA NRTL Program policy permits NRTLs to request, or OSHA to provide, recognition for comparable test standards, *i.e.*, other appropriate test standards covering comparable product testing. In this notice, OSHA has deleted UL 1262 from the list above and added UL 61010A–1, in accordance with this policy. In the final notice for WL's expansion, OSHA would not only formally delete UL 1262 from the scope of recognition of WL but also from the scope of any other NRTL still recognized for this standard. OSHA would also add UL 61010A–1 to the scope of those NRTLs and to WL's scope.

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–12]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2007 and Countries That Would Be Candidates but for Legal Prohibitions

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: Section 608(d) of the Millennium Challenge Act of 2003 requires the Millennium Challenge Corporation to publish a report that identifies countries that are ''candidate countries'' for Millennium Challenge Account assistance during FY 2007. The report is set forth in full below.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2007 and Countries That Would Be Candidates but for Legal Prohibitions

This report to Congress is provided in accordance with Section 608(a) of the Millennium Challenge Act of 2003, 22 U.S.C. 7701, 7707 (a) (''Act'').

The Act authorizes the provision of Millennium Challenge Account (''MCA'') assistance to countries that enter into Compacts with the United States to support policies and programs that advance the progress of such countries achieving lasting economic growth and poverty reduction. The Act requires Millennium Challenge Corporation (''MCC'') to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic

that advance the progress of such countries achieving lasting economic growth and poverty reduction. The Act requires Millennium Challenge Corporation (''MCC'') to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people and the opportunity to reduce poverty and generate economic growth in the country, will be eligible for MCA assistance for Fiscal Year (FY) 2007. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance for FY 2007 based on their per-capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for specified legal prohibitions on assistance (Section 608(a) of the Act);

2. The criteria and methodology that the MCC Board of Directors (''Board'') will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of subsections (a) and (b) of Section 607 of the Act in order to select ''MCA eligible countries'' from among the ''candidate countries'' (Section 608(b) of the Act); and

3. The list of countries determined by the Board to be ''MCA eligible countries'' for FY 2007, with a justification for such eligibility determination and selection for Compact negotiation, including which of the MCA eligible countries the Board will seek to enter into MCA Compacts (Section 608(d) of the Act).

This report is the first of three required reports listed above.

Candidate Countries for FY 2007

The Act requires the identification of all countries that are candidates for MCA assistance for FY 2007 and the identification of all countries that would be candidate countries but for specified legal prohibitions on assistance. Sections 606(a) and (b) of the Act provide that for FY 2007 a country shall be a candidate for the MCA if it:

- Meets one of the following two income level tests:
  - Has a per capita income equal to or less than the historical ceiling of the International Development Association eligibility for the fiscal year involved (or $1,675 gross national income (GNI) per capita for FY 2007) (the ''low income category''); or
  - Is classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved (or $1,676 to $3,465 GNI per capita for FY 2007) (the ''lower middle income category''); and
- Is not ineligible to receive U.S. economic assistance under Part I of the Foreign Assistance Act of 1961, as amended, (''Foreign Assistance Act''), by reason of the application of the Foreign Assistance Act or any other provision of law.

Pursuant to Section 606(c) of the Act, the Board has identified the following countries as candidate countries under the Act for FY 2007. In so doing, the Board has anticipated that prohibitions against assistance as applied to countries in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FY 2006 FOAA) will again apply for FY 2007, even though the Foreign Operations, Export Financing and Related Programs Appropriations Act for FY 2007 has not yet been enacted and certain findings under other statutes have not yet been made. As noted below, MCC will provide any required updates on subsequent changes in applicable legislation or other circumstances that affects the status of any country as a candidate country for FY 2007.

Candidate Countries: Low Income Category

1. Afghanistan
2. Angola
3. Armenia
4. Azerbaijan
5. Bangladesh
6. Benin
7. Bhutan
8. Bolivia
9. Burkina Faso
10. Burundi
11. Cameroon
12. Central African Republic
13. Chad
14. Comoros
15. Congo, Democratic Republic of the
16. Congo, Republic of the
17. Djibouti
18. East Timor
19. Egypt
20. Eritrea
21. Ethiopia
22. Gambia, The
23. Georgia
24. Ghana
25. Guinea
26. Guinea-Bissau
27. Guyana
28. Haiti
29. Honduras
30. India
31. Indonesia
32. Iraq
33. Kenya
34. Kiribati
35. Kyrgyzstan
36. Laos
37. Lesotho
38. Liberia
39. Madagascar
40. Malawi
41. Mali
42. Mauritania
43. Moldova
44. Mongolia
45. Mozambique
46. Nepal
47. Nicaragua
48. Niger
49. Nigeria
50. Pakistan
51. Papua New Guinea
52. Paraguay
53. Philippines
54. Rwanda
55. Sao Tome and Principe
56. Senegal
57. Sierra Leone
58. Solomon Islands
59. Sri Lanka
60. Tajikistan
61. Tanzania
62. Togo
63. Turkmenistan
64. Uganda
65. Ukraine
66. Vanuatu
67. Vietnam
68. Yemen
69. Zambia

Candidate Countries: Lower Middle Income Category

1. Albania
2. Algeria
3. Belarus
4. Brazil
5. Bulgaria
6. Cape Verde
7. Colombia
8. Dominican Republic
9. Ecuador
10. El Salvador
11. Fiji Islands
12. Guatemala
13. Jamaica
14. Jordan
15. Kazakhstan
16. Macedonia
17. Maldives
18. Marshall Islands
19. Micronesia, Federated States of
20. Montenegro
21. Morocco

22. Namibia
23. Peru
24. Samoa
25. Suriname
26. Swaziland
27. Thailand
28. Tonga
29. Tunisia
30. Tuvalu

Countries That Would Be Candidate Countries but for Legal Prohibitions That Prohibit Assistance

Countries that would be considered candidate countries for FY 2007, but are ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply for FY 2006 and that are anticipated to apply again for FY 2007.

Prohibited Countries: Low Income Category

1. Burma is subject to numerous restrictions, including but not limited to Section 570 of the FY 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–208) which prohibits assistance to the government of Burma until it makes progress on improving human rights and implementing democratic government, and due to its status as a major drug-transit or major illicit drug producing country for 2005 (Presidential Determination No. 2005–36 (9/15/2005)) and a Tier III country under the Trafficking Victims Protection Act (Presidential Determination No. 2005–37 (9/21/2005)).

2. Cambodia's central government is subject to Section 554 of the FY 2006 FOAA.

3. The Cote d'Ivoire is subject to Section 508 of the FY 2006 FOAA which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

4. Cuba is subject to numerous restrictions, including but not limited to Section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, provisions of the Cuban Liberty and Democratic Solidarity Act of 1996 (PL 104–114), and Section 507 of the FY 2006 FOAA.

5. North Korea is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism and Section 507 of the FY 2006 FOAA.

6. Somalia is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2006 FOAA, which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

7. Sudan is subject to numerous restrictions, including but not limited to Section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, Section 512 of the FY 2006 FOAA and Section 620(q) of the Foreign Assistance Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances, Section 508 of the FY 2006 FOAA which prohibits assistance to a country whose duly elected head of government being deposed by military coup or decree, and Section 569 of the FY2006 FOAA.

8. Syria is subject to numerous restrictions, including but not limited to 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, Section 507 of the FY 2006 FOAA, and Section 512 of the FY 2006 FOAA and Section 620(q) of the Foreign Assistance Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

9. Uzbekistan's central government is subject to Section 586 of the FY 2006 FOAA, which requires that funds appropriated for assistance to the central government of Uzbekistan may be made available only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the United States.

10. Zimbabwe is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2006 FOAA which prohibit assistance to countries in default in payment to the United States in certain circumstances.

Prohibited Countries: Lower Middle Income Category

1. Republika Srpska, which is part of the country of Bosnia and Herzegovina, is subject to Section 561 of the FY 2006 FOAA, which prohibits assistance to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations with respect to the International Criminal Tribunal for the former Yugoslavia.

2. China, according to the Department of State, is not eligible to receive economic assistance from the United States, absent special authority, because of concerns relative to China's record on human rights.

3. Iran is subject to numerous restrictions, including but not limited to Section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism and Section 507 of the FY 2006 FOAA.

4. Serbia is subject to Section 561 of the FY 2006 FOAA, which prohibits assistance to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations with respect to the International Criminal Tribunal for the former Yugoslavia. In addition, Section 563 of the FY 2006 FOAA restricts certain assistance for the central Government of Serbia if the Secretary does not make a certification regarding, among other things, cooperation with the International Criminal Tribunal for the former Yugoslavia.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under Part I of the Foreign Assistance Act by reason of application of Foreign Assistance Act or any other provision of law for FY 2007. MCC will include any required updates on such statutory eligibility that affect countries' identification as candidate countries for FY 2007, at such time as it publishes the Notices required by Sections 608(b) and 608(d) of the Act or at other appropriate times. Any such updates with regard to the legal eligibility or ineligibility of particular countries identified in this report will not affect the date on which the Board is authorized to determine eligible countries from among candidate countries which, in accordance with Section 608(a) of the Act, shall be no sooner than 90 days from the date of publication of this report.

Dated: August 11, 2006.

Maura E. Griffin,

Vice President & General Counsel (Acting), Millennium Challenge Corporation.

[FR Doc. E6–13545 Filed 8–16–06; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of proposed guidance.

SUMMARY: The National Endowment for the Humanities (NEH) publishes for public comment proposed policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: Comments must be submitted on or before September 18, 2006. NEH will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

ADDRESSES: Interested persons should submit written comments to Office of the General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506. Comments may also be submitted by facsimile at 202–606–8600 or by e-mail at *gencounsel@neh.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Gottry at the above address or by telephone at 202–606–8322; TDD: 202–606–8282. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: Under NEH regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of Federal financial assistance from the NEH (recipients) have a responsibility to ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. See 45 CFR Part 1170. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice, guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' See 65 FR 50123 (August 16, 2000).

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report To Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). The proposed guidance is based upon and incorporates the legal analysis and compliance standards of the model June 18, 2002, DOJ LEP Guidance for Recipients.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance is not subject to the requirements of Executive Order 12866.

The text of the complete proposed guidance document appears below.

Dated: August 11, 2006.

Heather C. Gottry,

Acting General Counsel, National Endowment for the Humanities.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.''

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination.

The purpose of this policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the National Endowment for the Humanities (NEH), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons pursuant to Title VI of the Civil Rights Act of 1964 and the NEH implementing regulations. The policy guidance reiterates NEH's longstanding position that, in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide.

This policy guidance is modeled on and incorporates the legal analysis and compliance standards and framework set out in Section I through Section VIII of Department of Justice (DOJ) Policy Guidance titled ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' published at 67 FR 41455, 41457–41465 (June 18, 2002) (DOJ Recipient LEP Guidance). To the extent additional clarification is desired on the obligation under Title VI to ensure meaningful access by LEP persons and how recipients can satisfy that obligation, a recipient should consult the more detailed discussion of the applicable compliance standards and relevant factors set out in DOJ Recipient LEP Guidance. The DOJ Guidance may be viewed and downloaded at *http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm* or at *http://www.lep.gov.* In addition, NEH recipients also receiving Federal financial assistance from other Federal agencies, such as the Department of Education or the National Endowment for the Arts, should review those agencies' guidance documents at *http://www.lep.gov* for a more focused explanation of how they can comply with their Title VI and regulatory obligations in the context of similar Federally assisted programs or activities.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275

(2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. The NEH and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Purpose and Application

This policy guidance provides a legal framework to assist recipients in developing appropriate and reasonable language assistance measures designed to address the needs of LEP individuals. The NEH Title VI implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services.

Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options that follow. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

III. Policy Guidance

1. Who Is Covered

All entities that receive Federal financial assistance from NEH, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons

Title VI and the NEH implementing regulations require that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide. Recipients of Federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

It is also important to emphasize that academic institutions, nonprofit organizations, museums and libraries are in the business of maintaining, sharing, and disseminating vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by these recipients is access to information, whether maintained on-site or elsewhere, not the generation of the source information itself. This distinction is critical in properly applying Title VI to academic institutions, nonprofit organizations, museums, libraries, and similar programs. For example, in the context of library and museum services, recipients initially should focus on their procedures or services that directly impact access in three areas. First, applications for library or museum membership cards, instructions on card usage, exhibit brochures, building maps, and dissemination of information on where and how source material and collections are maintained and indexed, should be available in appropriate languages other than English. Second, recipients should, consistent with the four factor analysis, determine what reasonable steps could be taken to enhance the value of their collections or services to LEP persons, including, for example, accessing language-appropriate books through inter-library loans, direct acquisitions, and/or on-line materials. Third, to the extent a recipient provides services beyond museum exhibitions or access to books, art, or cultural collections to include the generation of information about those collections, research aids, or community educational outreach such as reading or discovery programs, these additional or enhanced services should be separately evaluated under the four-factor analysis. A similar distinction can be employed with respect to a museum's exhibits versus a museum's procedures for meaningful access to those exhibits.

What constitutes reasonable steps to ensure meaningful access in the context of Federally-assisted programs and activities in the area of academic institutions, nonprofit organizations, museums and library services will be contingent upon a balancing of four factors: (1) The number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals' contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs. Each of these factors is summarized below. In addition, recipients should consult Section V of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41459–41460 or *http://www.lep.gov,* for additional detail on the nature, scope, and application of these factors.

(1) Number or Proportion of LEP Individuals

The appropriateness of any action will depend on the size and proportion of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be effectively excluded from meaningful access to the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

(2) Frequency of Contact With the Program

Frequency of contact between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, a recipient has greater duties than if such contact is unpredictable and infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the

flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have serious, or even life or death implications than in programs that are not crucial to one's day-to-day existence, economic livelihood, safety, or education. For example, the obligations of a Federally assisted school or hospital differ from those of a Federally assisted nonprofit organization, museum or library. This factor implies that the obligation to provide translation services will be highest in programs providing education, job training, medical/health services, social welfare services, and similar services. As a general matter, it is less likely that nonprofit organizations, museums and libraries receiving assistance from the NEH will provide services having a similar immediate and direct impact on a person's life or livelihood.

Thus, in large measure, it is the first factor (number or proportion of LEP individuals) that will have the greatest impact in determining the initial need for language assistance services.

In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. Another aspect of this factor is the nature of the program itself. Some museum content may be extremely accessible regardless of language. In these instances, little translation might be required.

(4) Resources Available

NEH is aware that its recipients may experience difficulties with resource allocation. Many of the organizations' overall budgets, and awards involved are quite small. The resources available to a recipient of Federal assistance may have an impact on the nature of the steps that recipient must take to ensure meaningful access. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not providing an important service or benefit from, for instance, a health, education, economic, or safety perspective. Translation and interpretation costs are appropriately included in award budget requests.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Even those award recipients who serve very few LEP persons on an infrequent basis should use a balancing analysis to determine whether the importance of the service(s) provided and minimal costs make language assistance measures reasonable even in the case of limited and infrequent interactions with LEP persons. Recipients have substantial flexibility in determining the appropriate mix.

IV. Strategies for Ensuring Meaningful Access

Academic institutions, nonprofit organizations, museums and libraries have a long history of interacting with people with varying language backgrounds and capabilities within the communities where they are located. The agency's goal is to continue to encourage these efforts and share practices so that other academic institutions, nonprofit organizations, museums and libraries can benefit from other institutions' experiences.

The following are examples of language assistance strategies that are potentially useful for all recipients. These strategies incorporate a variety of options and methods for providing meaningful access to LEP beneficiaries and provide examples of how recipients should take each of the four factors discussed above into account when developing an LEP strategy. Not every option is necessary or appropriate for every recipient with respect to all of its programs and activities. Indeed, a language assistance plan need not be intricate; it may be as simple as being prepared to use a commercially available language line to obtain immediate interpreting services and/or having bilingual staff members available who are fluent in the most common non-English languages spoken in the area. Recipients should exercise the flexibility afforded under this Guidance to select those language assistance measures which have the greatest potential to address, at appropriate levels and in reasonable manners, the specific language needs of the LEP populations they serve.

Finally, the examples below are not intended to suggest that if services to LEP populations aren't legally required under Title VI and Title VI regulations, they should not be undertaken. Part of the way in which academic institutions, nonprofit organizations, museums and libraries build communities is by cutting across barriers like language. A small investment in outreach to a linguistically diverse community may well result in a rich cultural exchange that benefits not only the LEP population, but also the academic institutions, nonprofit organizations, museums and libraries and the community as a whole.

Examples:

- Identification of the languages that are likely to be encountered in, and the number of LEP persons that are likely to be affected by, the program. This information may be gathered through review of census and constituent data as well as data from school systems and community agencies and organizations;
- Posting signs in public areas in several languages, informing the public of its right to free interpreter services and inviting members of the public to identify themselves as persons needing language assistance;
- Use of ''I speak'' cards for public-contact personnel so that the public can easily identify staff language abilities;
- Employment of staff, bilingual in appropriate languages, in public contact positions;
- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner;
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line for on-demand service;
- Translations of application forms, instructional, informational and other key documents into appropriate non-English languages and provide oral interpreter assistance with documents for those persons whose language does not exist in written form;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls to or from LEP persons;
- Notice to and training of all staff, particularly public contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about access to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff; and
- Notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

In identifying language assistance measures, recipients should avoid

relying on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities. However, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. But where a balancing of the four factors indicate that recipient-provided language assistance is warranted, the recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

The use of family and friends as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided language assistance is not necessary. An example of this might be a bookstore or cafeteria associated with a museum. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for technical accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or other informal ad hoc interpreters may be appropriate.

As noted throughout this guidance, NEH award recipients have a great deal of flexibility in addressing the needs of their constituents with limited English skills. That flexibility does not diminish, and should not be used to minimize, the obligation that those needs be addressed. NEH recipients should apply the four factors outlined above to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons. By balancing the number or proportion of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available, NEH awardees' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-requested and as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation. For example, Title VI does not require a library to translate its collections, but it does require the implementation of appropriate language assistance measures to permit an otherwise eligible LEP person to apply for a library card and potentially to access appropriate-language materials through inter-library loans or other reasonable methods. The NEH views this policy guidance as providing sufficient flexibility to allow the NEH to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program. Recipients should consult Section VI of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41461–41464 or *http://www.lep.gov,* for additional clarification on the standards applicable to assessing interpreter and translator competence, and for determining when translations of documents vital to accessing program benefits should be undertaken.

The key to ensuring meaningful access for people with limited English skills is effective communication. Academic institutions, nonprofit organizations, museums and libraries can ensure effective communication by developing and implementing a comprehensive language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP constituents. Such a program should also provide for a range of oral language assistance options, notice to LEP persons of the right to language assistance, periodic training of staff, monitoring of the program and, in certain circumstances, the translation of written materials.

Each recipient should, based on its own volume and frequency of contact with LEP clients and its own available resources, adopt a procedure for the resolution of complaints regarding the provision of language assistance and for notifying the public of their right to and how to file a complaint under Title VI. State recipients, who will frequently serve large numbers of LEP individuals, may consider appointing a senior level employee to coordinate the language assistance program and to ensure that there is regular monitoring of the program.

V. Compliance and Enforcement

Executive Order 13166 requires that each Federal department or agency extending Federal financial assistance subject to Title VI issue separate guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of Federal financial assistance from NEH also receive assistance from one or more other Federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for NEH. NEH, in discharging its compliance and enforcement obligations under Title VI, looks to analyses performed and plans developed in response to similar detailed LEP guidance issued by other Federal agencies. Recipients may rely upon guidance issued by those agencies.

NEH's regulations implementing Title VI contain compliance and enforcement provisions to ensure that a recipient's policies and practices overcome barriers resulting from language differences that would deny LEP persons an equal opportunity to participate in and access to programs, services and benefits offered by NEH. See 45 CFR Part 1110. The agency will ensure that its recipient entities fulfill their responsibilities to LEP persons through the procedures provided for in the Title VI regulations.

The Title VI regulations provide that NEH will investigate (or contact its State recipient of funds to investigate, if appropriate) whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, NEH will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, NEH must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, the NEH will secure compliance through (a) the suspension or termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to the Department of Justice for injunctive relief or other enforcement proceedings, or (c) any other means authorized by Federal, state, or local law.

Under the Title VI regulations, the NEH has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. NEH will engage in voluntary compliance efforts and will provide technical assistance to

recipients at all stages of its investigation. During these efforts to secure voluntary compliance, NEH will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance.

In determining a recipient's compliance with Title VI, the NEH's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient's appropriate use of the methods and options discussed in this policy guidance will be viewed by the NEH as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services (such as timely effective oral interpretation of vital documents), NEH will not find the recipient/covered entity in noncompliance.

If you have any questions related to this policy, please contact the NEH Office of the General Counsel.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. Redacted; License Nos. Redacted; EA–06–196]

In the Matter of Certain 10 CFR Part 50 Licensees Who Transport Spent Nuclear Fuel Under the Provisions of 10 CFR Part 71

Order Modifying Licenses (Effective Immediately)

I.

The licensees identified in Attachment 1 (Redacted) to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50 and 71. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.[1] These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 71, *It is hereby ordered,* effective immediately, that all licenses identified in Attachment 1 to this Order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by September 1, 2006, unless otherwise specified in Attachment 2, or before the first shipment after August 11, 2006, whichever is earlier.

B.1. All licensees shall, by September 1, 2006, unless otherwise specified in Attachment 2, or before the first shipment after August 11, 2006, whichever is earlier, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee

[1] Attachments 1 and 2 contain Safeguards Information and will not be released to the public.

to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel must notify the Commission, by September 1, 2006, unless otherwise specified in Attachment 2, or before the first shipment after August 11, 2006, whichever is earlier, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All licensees shall, by September 1, 2006, unless otherwise specified in Attachment 2, or before the first shipment after August 11, 2006, whichever is earlier, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report by September 1, 2006, to the Commission when they have achieved or plan to achieve full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

This Order contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150–0012.

The burden to the public for the mandatory information collections is estimated to average 500 hours per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0012), Office of Management and Budget, Washington, DC 20503.

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 11th day of August, 2006.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13561 Filed 8–16–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–83; License No. R–56; EA–06–190]

In the Matter of University of Florida, and All Other Persons Who Seek or Obtain Access to New Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Check Requirements for Access to New Safeguards Information (Effective Immediately)

I

The University of Florida (the Licensee) holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing it to engage in an activity subject to regulation by the Commission. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigations (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)), it is unlikely that many Licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have active federal security clearances have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to new SGI,[2] as set forth by this Order, so that the Licensee can obtain new SGI. This Order also imposes requirements for access to new SGI by any person[3], from any person, whether or not a Licensee, Applicant or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect SGI and prohibit its unauthorized disclosure. Section 147 of the AEA grants the Commission explicit authority to issue such orders as necessary to prohibit the unauthorized disclosure of safeguards information. Furthermore, section 652 of the EPAct amended section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI.

In order to provide assurance that the Licensee is implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to new SGI, the Licensee shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to sections 104, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR parts 50 and 73, *It is hereby ordered*, effective immediately, that the licensee and all other persons who seek or obtain access to new safeguards information, as described above, shall comply with the requirements set forth in this order.

A. No person may have access to new Safeguards Information unless that person has a need to know the new SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, which has been favorably decided, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 (71 FR 33989 (June 13, 2006)) or who has an active Federal security clearance.

B. No person may provide new SGI to any other person except in accordance with condition III.A. above. Prior to sharing new SGI with any other person, a copy of this Order shall be provided to that person.

The Director, Office of Nuclear Reactor Regulation, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

[2] ''New SGI'' means SGI generated subsequent to August 8, 2005, the date of enactment of the EPAct. ''New SGI'' also means any SGI, regardless of when it was generated, that is being accessed by an individual who has never been previously granted access to SGI.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 11th day of August 2006.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13562 Filed 8–16–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft of a new guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled ''Guidelines for Evaluating Fatigue Analyses Incorporating the Life Reduction of Metal Components Due to the Effects of the Light-Water Reactor Environment for New Reactors,'' is temporarily identified by its task number, DG–1144, which should be mentioned in all related correspondence. This proposed regulatory guide describes a method that the NRC staff considers acceptable for use in complying with the agency's regulations in Title 10, part 50, of the *Code of Federal Regulations* (10 CFR Part 50), ''Domestic Licensing of Production and Utilization Facilities.'' Specifically, in Appendix A to10 CFR part 50, General Design Criterion (GDC) 1, ''Quality Standards and Records,'' requires, in part, that structures, systems, and components that are important to safety must be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety function performed. In addition, GDC 30, ''Quality of Reactor Coolant Pressure Boundary,'' requires, in part, that components that are part of the reactor coolant pressure boundary must be designed, fabricated, erected, and tested to the highest practical quality standards.

Augmenting those design criteria, 10 CFR 50.55a, ''Codes and Standards,'' endorses the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code for design of safety-related systems and components. In particular, Section 50.55a(c), ''Reactor Coolant Pressure Boundary,'' requires, in part, that components of the reactor coolant pressure boundary must be meet the requirements for Class 1 components in Section III, ''Rules for Construction of Nuclear Power Plant Components,'' of the ASME Boiler and Pressure Vessel Code. Specifically, those Class 1 requirements contain provisions, including fatigue design curves, for determining a component's suitability for cyclic service. These fatigue design curves are based on strain-controlled tests performed on small polished specimens, at room temperature, in air environments. Thus, these curves do not address the impact of the reactor coolant system environment.

This draft regulatory guide provides guidance for use in determining the acceptable fatigue life of ASME pressure boundary components, with consideration of the light-water reactor (LWR) environment. In so doing, this guide describes a methodology that the NRC staff considers acceptable to support reviews of applications that the agency expects to receive for new nuclear reactor construction permits or operating licenses under 10 CFR part 50, design certifications under 10 CFR part 52, and combined licenses under 10 CFR part 52 that do not reference a standard design. Because of significant conservatism in quantifying other plant-related variables (such as cyclic behavior, including stress and loading rates) involved in cumulative fatigue life calculations, the design of the current fleet of reactors is satisfactory, and the plants are safe to operate.

The ASME Section III design curves, developed in the late 1960s and early 1970s, are based on tests conducted in laboratory air environments at ambient temperatures. The original code developers applied margins of 2 on strain and 20 on cyclic life to account for variations in materials, surface finish, data scatter, and environmental effects (including temperature differences between specimen test conditions and reactor operating experience). However, the developers lacked sufficient data to explicitly evaluate and account for the degradation attributable to exposure to aqueous coolants. More recent fatigue test data from the United States, Japan, and elsewhere show that the LWR environment can have a significant impact on the fatigue life of carbon and low-alloy steels, as well as austenitic stainless steel.

Two distinct methods can be used to incorporate LWR environmental effects into the fatigue analysis of ASME Class 1 components. The first method involves developing new fatigue curves that are applicable to LWR environments. Given that the fatigue life of ASME Class 1 components in LWR environments is a function of several parameters, this method would necessitate developing several fatigue curves to address potential parameter variations. An alternative would be to develop a single bounding fatigue curve, which may be overly conservative for most applications. The second method involves using an environmental correction factor (F_{en}) to account for LWR environments by correcting the fatigue usage calculated with the ASME ''air'' curves. This method affords the

designer greater flexibility to calculate the appropriate impacts for specific environmental parameters. In addition, applicants have already used this method in their license renewal applications.

The NRC staff has selected the F_{en} method, as described in NUREG/CR–6909, ''Effect of LWR Coolant Environments on the Fatigue Life of Reactor Materials.'' In particular, Appendix A to that report, ''Incorporating Environmental Effects into Fatigue Evaluations,'' describes a methodology that the staff considers acceptable to incorporate the effects of reactor coolant environments on fatigue usage factor evaluations of metal components. In addition, NUREG/CR–6909 provides a comprehensive review of, and technical basis for, the methodology proposed in this draft regulatory guide, including analysis of each parameter affecting the fatigue evaluations.

The NRC staff is soliciting comments on both Draft Regulatory Guide DG–1144 and NUREG/CR–6909. Comments may be accompanied by relevant information or supporting data. Please mention DG–1144 and/or NUREG/CR–6909 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov.* You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–1144 may be directed to Hipolito J. Gonzalez at (301) 415–0068 or by e-mail to *HJG@nrc.gov.*

Comments would be most helpful if received by September 25, 2006. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession #ML060970173.

Electronic copies of NUREG/CR–6909 are available through the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html.* NUREG/CR–6909 is also available through ADAMS (*http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML061650347.

In addition, regulatory guides and NUREG-series reports are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 17th day of July, 2006.

For the U.S. Nuclear Regulatory Commission.

Mark A. Cunningham,

Director, Division of Fuel, Engineering & Radiological Research, Office of Nuclear Regulatory Research.

[FR Doc. E6–13560 Filed 8–16–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed License Renewal Interim Staff Guidance LR–ISG–2006–03: Staff Guidance for Preparing Severe Accident Mitigation Alternatives (SAMA) Analyses; Solicitation of Public Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: NRC is soliciting public comment on its Proposed License Renewal Interim Staff Guidance LR–ISG–2006–03 (LR–ISG) for preparing Severe Accident Mitigation Alternatives (SAMA) analyses. This LR–ISG recommends that applicants for license renewal use the Guidance Document NEI 05–01, Rev. A (ADAMS Accession No. ML060530203) when preparing their SAMA analyses. The NRC staff issues LR–ISGs to facilitate timely implementation of the license renewal rule and to review activities associated with a license renewal application. Upon reviewing public comments, the NRC staff will evaluate the comments and make a determination to incorporate the comments, as appropriate. Once the NRC completes the LR–ISG, it will issue the LR–ISG for NRC and industry use. The NRC staff will also incorporate the approved LR–ISG into the next revision of Supplement 1 to Regulatory Guide 4.2, ''Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses.''

DATES: Comments may be submitted by September 18, 2006. Comments received after this date will be considered, if it is practical to do so, but the Commission is to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted to: Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments should be delivered to: 11545 Rockville Pike (first floor), Rockville, Maryland, Room T–6D59,

between 7:30 a.m. and 4:15 p.m. on Federal workdays. Persons may also provide comments via e-mail at *RLE@NRC.GOV*. The NRC maintains an Agencywide Documents and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Emch, Jr., Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1590 or by e-mail at *rle@nrc.gov*.

SUPPLEMENTARY INFORMATION: Attachment 1 to this **Federal Register** notice, entitled *Staff Position and Rationale for the Proposed License Renewal Interim Staff Guidance LR–ISG–2006–03: Staff Guidance for Preparing Severe Accident Mitigation Alternatives (SAMA) Analyses* contains the NRC staff's rationale for publishing the proposed LR–ISG–2006–03. Attachment 2 to this **Federal Register** notice, entitled *Proposed License Renewal Interim Staff Guidance LR–ISG–2006–03: Staff Guidance for Preparing Severe Accident Mitigation Alternatives (SAMA) Analyses*, contains the guidance for preparing SAMA analyses related to license renewal applications.

The NRC staff is issuing this notice to solicit public comments on the proposed LR–ISG–2006–03. After the NRC staff considers any public comments, it will make a determination regarding the proposed LR–ISG.

Dated at Rockville, Maryland, this 10th day of August 2006.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Deputy Director Division of License Renewal, Office of Nuclear Reactor Regulation.

Attachment 1—Staff Position and Rationale for the Proposed License Renewal Interim Staff Guidance LR–ISG–2006–03: Staff Guidance for Preparing Severe Accident Mitigation Alternatives (SAMA) Analyses

Staff Position:

The NRC staff recommends that applicants for license renewal follow the guidance provided in Nuclear Energy Institute NEI 05–01, ''Severe Accident Mitigation Alternatives (SAMA) Analysis—Guidance Document,'' Rev. A when preparing their SAMA analyses.

Rationale:

The Nuclear Energy Institute (NEI) developed a generic Guidance Document NEI 05–01, Rev. A, to help clarify the NRC staff's expectations regarding the information that needs to be included in SAMA analyses. The NRC staff reviewed and concluded that NEI 05–01, Rev. A describes existing NRC regulations, and facilitates complete preparation of SAMA analysis submittals. The staff finds that utilization of the guidance provided in NEI 05–01, Rev. A will result in improved quality in SAMA analyses and a reduction in the number of requests for additional information.

Attachment 2—Proposed License Renewal Interim Staff Guidance LR–ISG–2006–03: Staff Guidance for Preparing Severe Accident Mitigation Alternatives (SAMA) Analyses

Introduction

A Severe Accident Mitigation Alternatives (SAMA) analyses is required as part of a license renewal application, if a SAMA analysis has not already been performed for the plant and reviewed by the NRC staff. SAMA analyses have been performed and submitted to the NRC as part of all the applications for license renewal received by the staff thus far. Therefore, this LR–ISG is being proposed consistent with our goal to more efficiently resolve license renewal issues identified by the staff or the industry.

Background and Discussion

After receiving extensive requests for additional information regarding the SAMA analyses, several applicants for license renewal concluded that they did not fully understand the kind of information that the NRC staff was expecting to see in SAMA analyses.

The Nuclear Energy Institute (NEI) developed a generic guidance document to help clarify the NRC staff's expectations regarding the information that needs to be submitted in SAMA analyses. On April 8, 2005, NEI submitted NEI 05–01, ''Severe Accident Mitigation Alternatives (SAMA) Analysis—Guidance Document.'' The NRC staff reviewed this guidance document, and by letter, dated July 12, 2005, provided comments on NEI 05–01. The NRC staff's comments were discussed during a public meeting between NEI and NRC on July 21, 2005.

On February 17, 2006, NEI submitted its NEI 05–01, Rev. A, dated November 2005. The NRC staff reviewed and concluded that this version fully resolved the NRC staff's comments. In addition, the NRC staff concluded that NEI 05–01, Rev. A, describes existing NRC regulations, and facilitates complete preparation of SAMA analysis submittals.

Some applicants for license renewal have submitted SAMA analyses using the guidance provided in NEI 05–01, Rev A. The NRC staff found improved quality in the submitted SAMA analyses and a reduction in the number of requests for additional information for those applications that followed the guidance provided in NEI 05–01, Rev. A.

Proposed Action

The staff is proposing that applicants for license renewal follow the guidance provided in NEI 05–01, Rev. A when preparing their SAMA analyses. The staff finds that NEI 05–01, Rev. A, describes existing NRC regulations, and facilitates complete preparation of SAMA analysis submittals.

Although this proposed LR–ISG does not convey a change in the NRC's regulations or how they are being interpreted, it is being provided to facilitate complete preparation of future SAMA analysis submittals in support of applications for license renewal. The NRC staff plans to incorporate the guidance provided in NEI 05–01, Rev. A, into a future update of Supplement 1 to Regulatory Guide 4.2, ''Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses.'' Because this LR–ISG provides a clarification of existing guidance with no additional requirements, the staff did not perform a backfit evaluation. For those that are interested in reviewing NEI 05–01, Rev. A, the Agencywide Documents Access and Management System (ADAMS) Accession Number is ML060530203.

[FR Doc. E6–13559 Filed 8–16–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54300; File No. SR–CBOE–2006–67]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Equity Options Designated Primary Market Maker Transaction Fee

August 10, 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 July 17, 2006, the Chicago Board Options Exchange, Inc. (the ''Exchange'' or the ''CBOE'') 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 Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to amend its Fees Schedule to increase the equity options Designated Primary Market Maker (''DPM'') transaction fee. The text of the proposed rule change is on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the equity options DPM transaction fee from the current $.14 per contract to $.16 per contract, effective August 1, 2006. The Exchange believes that this fee increase is appropriate given that DPM costs are expected to decrease as the result of recently implemented enhanced DPM Linkage transaction fee credits.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[6] in general, and furthers the objectives of Section 6(b)(4)[7] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

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–CBOE–2006–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2006–67. 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 No. SR–CBOE–2006–67 and should be submitted on or before September 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–13567 Filed 8–16–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Section 21 of the CBOE Fees Schedule. *See also* Securities Exchange Act Release No. 53866 (May 25, 2006), 71 FR 31237 (June 1, 2006). Linkage order fees (except for Satisfaction Orders) and related transaction fee credits are in effect on a pilot basis until July 31, 2007. *See* Footnote 8 and Section 21 of the CBOE Fees Schedule dated August 3, 2006.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54307; File No. SR–NASD–2006–096]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Additional Market Participant Identifier Functionality on the Alternative Display Facility

August 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 4613A and adopt IM–4613A–1 to enable electronic communications network (''ECN'') members that post quotations through the Alternative Display Facility (''ADF'') (*i.e.*, Registered Reporting ADF ECNs), to request and receive multiple market participant identifiers (''MPIDs'') with which to enter multiple quotes/orders in the ADF and report trades through the ADF trade reporting facility, the Trade Reporting and Comparison Service (''TRACS''), pursuant to the NASD Rule 4000A Series. Below is the text of the proposed rule change. Proposed new language is in *italics.*

4613A. Character of Quotations

(a) No Change.

(b) Primary and Additional MPIDs

(1) The first Market Participant Identifier (''MPID'') issued to an NASD Market Participant shall be referred to as the NASD Market Participant's ''Primary MPID.'' For a pilot period ending January 26, 2007, a Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through TRACS for any ADF-Eligible Security (as defined in NASD Rule 4100A). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.

(b) through (e) renumbered as (c) through (f).

IM–4613A–1 Procedures For Allocation of Multiple MPIDs

NASD considers the issuance of, the display of, and the trade reporting with Additional MPIDs to be a privilege and not a right. NASD has developed the following method for allocating the privilege of receiving, displaying, and trade reporting with Additional MPIDs in an orderly, predictable, and fair manner. While NASD does not intend to place a numerical limit on the number of Additional MPIDs it may grant to Registered Reporting ADF ECNs, given the agent business model of ECNs, NASD does not anticipate the granting of many additional MPIDs to Registered Reporting ADF ECNs.

As described in Rule 4613A, NASD will automatically designate a Registered Reporting ADF ECN's first MPID as a ''Primary MPID.'' Additional MPIDs will be designated as such. Registered Reporting ADF ECNs are required to use their Primary MPID in accordance with the requirements of NASD Rule 4613A as well as all existing requirements for the use of MPIDs in NASD systems and under NASD rules. Each of an ECN's MPID will be subject to the requirements of NASD Rule 4623A.

If it is determined that one or more Additional MPIDs are being used improperly, NASD staff retains full discretion to limit or withdraw its grant of the Additional MPID(s) for all purposes for all securities. In addition, if a Registered Reporting ADF ECN no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use an Additional MPID for any purpose in that security.

The first priority of NASD's method for allocating the privilege of displaying and trade reporting with Additional MPIDs is that each Registered Reporting ADF ECN should be permitted to display quotations and report trades under a Primary MPID before any is permitted to display additional quotations under and report trades with Additional MPIDs. If all requests for Primary MPIDs have been satisfied, NASD will then register Additional MPIDs on a first-come-first-served basis, consistent with the procedures listed below.

A Registered Reporting ADF ECN shall contact NASD in writing setting forth the bona fide business and/or regulatory reasons for requesting an Additional MPID. NASD will consider the business and/or regulatory reasons demonstrated by the Registered Reporting ADF ECN and promptly respond to the Registered Reporting ADF ECN. If an Additional MPID is granted, it will be subject to the same requirements applicable to a Primary MPID. NASD staff retains full discretion to limit or withdraw the Additional MPID privileges of a Registered Reporting ADF ECN.

A Registered Reporting ADF ECN that posts a quotation through either a Primary MPID or Additional MPID and reports a trade to TRACS as a result of such a posted quotation must utilize the corresponding Primary MPID or Additional MPID for reporting purposes through which the quotation was originally posted (i.e., Registered Reporting ADF ECNs must use the same MPID for TRACS trade reporting as was used for ADF quotation posting).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

An NASD member that registers as a market maker or ECN is currently permitted to enter one two-sided quotation per security in the ADF and is assigned a unique MPID with which to enter such quotations. The NASD 4600A Rule Series governs the character of such quotations and the rights and obligations of members that display quotations in the ADF via their MPIDs.

NASD proposes to amend NASD Rule 4613A and adopt IM–4613A–1 to permit NASD Registered Reporting ADF ECNs to request the use of additional MPIDs for a pilot period ending January 26, 2007.[6] At this time only ECNs have been certified for posting quotations through the ADF and at no time has a registered market maker been certified for the ADF. Accordingly, NASD believes it appropriate to limit the scope of this proposed rule to Registered Reporting ADF ECNs.[7] An ECN would be entitled

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NASD has requested the Commission to waive the 30-day pre-operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). *See* discussion *infra* Section III.

[6] This date coincides with the expiration of the current ADF pilot period. *See* Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). Accordingly, the provisions set forth in Rule 4613A and IM–4613A–1 will be extended with any extension of an ADF pilot period.

[7] In support of the requirement under the Act that NASD rules not result in unfair discrimination

to request additional MPIDs for displaying quotes/orders and reporting trades through the ADF trade reporting facility, TRACS, pursuant to the NASD Rule 4000A Series.

Registered Reporting ADF ECNs that are permitted the use of additional MPIDs for displaying quotes/orders would be subject to the same rules applicable to the members' first quotation. In other words, ECNs that display one or more additional quotes/orders would be required to comply with all rules applicable to ECNs in their display of quotes/orders.

NASD believes that the ability to enter quotes and orders and to display quotations under an additional MPID would potentially carry with it similar benefits that have resulted from the supplemental MPID Program of the Nasdaq Stock Market LLC (''Nasdaq'').[8] Specifically, the introduction of additional MPIDs on the ADF may enable Registered Reporting ADF ECNs to contribute more liquidity to the market, add to the transparency of trading interest, and better serve the needs of investors and the needs of Registered Reporting ADF ECNs themselves.[9] As noted above, Registered Reporting ADF ECNs that use an additional MPID would be required to comply with all NASD and Commission rules applicable to their current use of a single MPID. Registered Reporting ADF ECNs would be prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. To the extent that the allocation of additional MPIDs were to create regulatory confusion or ambiguity or would diminish the quality or rigor of the regulation of the over-the-counter (''OTC'') market, every inference would be drawn against the use of additional MPIDs. Moreover, pursuant to the proposed rule and interpretive material, NASD staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted the additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with these requirements because it will provide a process by which ECNs can request, and NASD can properly allocate, the use of additional MPIDs for displaying quotes and orders through the ADF.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

Pursuant to Rule 19b–4(f)(6)(iii),[12] a proposed ''non-controversial'' rule change does not become operative prior to 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. NASD has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The proposal will extend for ECN participants on the ADF a functionality that has been widely available to ECNs on Nasdaq through a pilot program. Allowing this proposal to become operative immediately is consistent with the protection of investors and the public interest because the benefits of the pilot and the use of multiple MPIDs can continue without undue disruption. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–096. 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

between members (*see* 15 U.S.C. 78o–(b)(6)), NASD commits to expand additional MPID privilege functionality to Registered Reporting ADF Market Makers at such time that at least one broker-dealer NASD member becomes certified for posting quotations through the ADF and demonstrates a bona fide business and/or regulatory need for additional MPID functionality.

[8] *See* Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003). *See also* Securities Exchange Act Release No. 53192 (January 30, 2006), 71 FR 6302 (February 4, 2006).

[9] NASD will assess no fees for the issuance or use of an additional MPID, other than the Commission-approved fees set forth in NASD Rule 7010.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 17 CFR 240.19b-4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–2006–096 and should be submitted on or before September 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–13568 Filed 8–16–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5506]

Bureau of Political-Military Affairs: Revocation of Defense Export Licenses to Venezuela

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States will no longer authorize the export of defense articles and defense services to Venezuela. Furthermore, all licenses and approvals to export or otherwise transfer defense articles and defense services to Venezuela pursuant to section 38 of the Arms Export Control Act (AECA) are revoked. The use of exemptions from licensing as provided for in the International Traffic in Arms Regulations (ITAR) also are revoked with regard to Venezuela with the exception of the license exemptions at section 123.17 for use in connection with certain temporary exports of firearms and ammunition for personal use.

EFFECTIVE DATE: August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen J. Tomchik, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2799 or FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: It is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Venezuela until further notice. In addition, U.S. manufacturers and exporters, and any other affected parties (e.g., brokers) are hereby notified that the Department of State has revoked all licenses and approvals authorizing the export of or other transfers of defense articles or services to Venezuela. Revocation extends to the deletion of Venezuela from any manufacturing license or technical assistance agreement involving Venezuela, including any agreement that has Venezuela as a sales territory. This action also precludes the use in connection with Venezuela of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), with the exception of the license exemptions at section 123.17 of the ITAR for exports of firearms and ammunition to Venezuela when for personal use by individuals (not for resale or retransfer, including to the Government of Venezuela) and the firearms will be returned to the United States.

This action has been taken pursuant to Section 38 of the AECA (22 U.S.C. 2778) and relevant provisions of the ITAR in furtherance of the foreign policy of the United States.

Dated: August 2, 2006.

Robert G. Joseph,

Under Secretary of State for Arms Control and International Security, Department of State.

[FR Doc. E6–13583 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5502]

Culturally Significant Objects Imported for Exhibition Determinations: ''A Bronze Menagerie: Mat Weight of Early China''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''A Bronze Menagerie: Mat Weight of Early China,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Isabella Stewart Gardner Museum, Boston, Massachusetts, from on or about October 5, 2006, until on or about January 14, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulznsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 10, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13576 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5500]

Culturally Significant Objects Imported for Exhibition Determinations: ''Constable's Great Landscapes: The Six-Foot Paintings''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Constable's Great Landscapes: The Six-Foot Paintings,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit

objects at The National Gallery of Art, Washington, DC, from on or about October 1, 2006, until on or about December 31, 2006, at the Huntington Museum and Art Gallery, San Marino, California, from on or about February 3, 2007, until on or about April 29, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 10, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13578 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5503]

Culturally Significant Objects Imported for Exhibition Determinations: ''From Casper David Friedrich to Gerhard Richter: German Paintings From Dresden''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''From Casper David Friedrich to Gerhard Richter: German Paintings from Dresden,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum's, Los Angeles, California, from on or about October 6, 2006, until on or about April 29, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 1, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13582 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5501]

Culturally Significant Objects Imported for Exhibition Determinations: ''Guercino: Mind to Paper''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Guercino: Mind to Paper,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, California, from on or about October 17, 2006, until on or about January 21, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 1, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13577 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5504]

Culturally Significant Objects Imported for Exhibition Determinations: ''Guercino: Stylistic Evolution in Focus''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the art object to be included in the exhibition ''Guercino: Stylistic Evolution in Focus,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Timken Museum of Art, San Diego, California, from on or about October 13, 2006, until on or about January 7, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 1, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13581 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5505]

Culturally Significant Objects Imported for Exhibition Determinations: ''Magritte and Contemporary Art: The Treachery of Images''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Magritte and Contemporary Art: The Treachery of Images,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at Los Angeles County Museum of Art, Los Angeles, California, from on or about November 19, 2006, until on or about March 4, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 10, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13580 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5499]

Culturally Significant Objects Imported for Exhibition Determinations: ''Robert Mapplethorpe and the Classical Tradition''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Robert Mapplethorpe and the Classical Tradition'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Hermitage Museum, Las Vegas, Nevada, from on or about September 25, 2006, until on or about April 8, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 10, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–13579 Filed 8–16–06; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Notice of Consideration of Standards

SUMMARY: The Tennessee Valley Authority (TVA) is considering adopting for itself and the distributors of TVA power certain metering and interconnection standards. The standards being considered are the Time-based Metering & Communications (hereinafter called ''Smart Metering''), Interconnection, and Net Metering standards listed in section 111(d) of the Public Utility Regulatory Act of 1978 (Pub. L. 95–617) as amended by the Energy Policy Act of 2005 (Pub. L. 109–58). The standards will be considered on the basis of their effect on conservation of energy, efficient use of facilities and resources, equity among electric consumers, and the objectives of the Tennessee Valley Authority Act. In addition, the Smart Metering standard will be considered in light of whether the benefits to the electric utility and its consumers are likely to exceed the costs of new metering and communications. Comments are requested from the public on whether TVA should adopt these standards or any variations on them.

DATES: *Smart Metering Standard:* Written comments on this standard must be received by December 1, 2006.

Interconnection and Net Metering Standards: Written comments on these standards must be received by March 1, 2007.

Workshops: concerning the standards to be considered will be held throughout the Valley during October 2006 at times and locations to be announced. The times and locations will be posted on the Web at *http://www.tva.com/purpa* and will also be announced through various media outlets. In addition, to be placed on a list to receive notice of workshop times and locations from TVA via mail, please write to the contact person designated below.

ADDRESSES: *Written comments should be sent to:* PURPA Standards Hearings, Attn: Carl Seigenthaler, Tennessee Valley Authority, One Century Place, 26 Century Boulevard, Nashville, TN 37214.

Comments may also be submitted via the Web, at *http://www.tva.com/purpa*, and, as described below, through various means provided at the workshops.

FOR FURTHER INFORMATION CONTACT: Carl Seigenthaler, Tennessee Valley Authority, One Century Place, 26 Century Boulevard, Nashville, TN 37214, (615) 232–6070.

SUPPLEMENTARY INFORMATION: Of the standards being considered, the Public Utility Regulatory Act of 1978 (Pub. L. 95–617) as amended by the Energy Policy Act of 2005 (Pub. L. 109–58) requires that TVA consider these standards. Accordingly, data, views, and comments are requested from the public on the Smart Metering, Interconnection, and Net Metering standards. Comments on variations in any of the standards, as well as views for or against their adoption are welcome. The three standards are being presented in order to initiate consideration and obtain the public's views on the need and desirability of such standards. Determinations on the appropriateness of the standards will be made by the TVA Board of Directors. The TVA Board will also determine, what, if any,

standards included in this notice will be implemented by TVA for itself and the distributors of TVA power.

Standards: The standards about which a determination will be made are:

(1) *Smart Metering.*

A. Not later than 18 months after the enactment of these standards, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

B. The types of time-based rate schedules that may be offered under the scheduled referred to in subparagraph (A) include, among others:

i. Time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

ii. Critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

iii. Real-time pricing whereby electricity prices are set for a specific time period on an advance or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

iv. Credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

C. Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

D. In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of electric utility.

E. Notwithstanding subsections (b) and (c) of section 2622 of Title 16 of the United States Code, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 2625(i) of said title and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

(2) *Interconnection.* Each utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ''interconnection service'' means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electric and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

(3) *Net metering.* Each utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ''net metering service'' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

Procedures: Written data, views, and comments on the standards are requested from the public. All material relating to the Smart Metering standard must be received by 5 p.m. EST on December 1, 2006. All material relating to the Interconnection and the Net Metering standard must be received by March 1, 2007. All materials received by TVA before these designated times will be considered by TVA. Written statements of TVA staff concerning the standards will be made part of the official record at least 30 days before the date the record closes, at which time they will be made available to the public on request.

In order to assist interested consumers in preparing written data, views, and comments for the record, TVA will sponsor a series of five (5) workshops which will provide various means by which interested parties can be informed about the standards set out in this notice. These workshops will be held throughout the Valley during September and October 2006 at times and locations to be announced via the various means discussed above.

A transcribing service will be onsite to record any oral comments one wishes to have placed in the record. In addition, workshop attendees will have the opportunity to submit their comments to the record by accessing computers available at the workshops for such purposes.

The official record will consist of all oral comments submitted and transcribed at the workshops, all material submitted electronically, and all written materials submitted within the time set forth above. A summary of the record will be prepared by TVA staff and will be transmitted to the TVA Board of Directors along with the complete record. The record will be used by the Board in making the determinations required by section 111(d) of the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95–617) as amended by the Energy Policy Act of 2005 (Pub. L. 109–58) and in fulfilling its obligation under the Tennessee Valley Authority Act.

Individual copies of the record will be available to the public at cost of reproduction. Copies will also be kept on file for public inspection at the following locations: Tennessee Valley Authority, One Century Place, 26 Century Boulevard, Nashville, Tennessee, (615) 232–6070; Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee (423) 751–0011; and on the Web at *http://www.tva.com/purpa*.

Nicholas P. Goschy, Jr.,

Assistant General Counsel.

[FR Doc. E6–13557 Filed 8–16–06; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Transfer Airport Property at Clinton-Sherman Industrial Airpark, From the City of Clinton, OK, to the Oklahoma Space Industry Development Authority, a State Agency

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request To Release Airport Property.

SUMMARY: the FAA proposes to rule and invites public comment on the transfer of airport land at Clinton-Sherman Airpark under the provisions of Title 49 United States Code, Section 47153.

DATES: Comments must be received on or before September 18, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Grayson Bottom, City Manager, City of Clinton, and Mr. Bill Khourie, Executive Director, Oklahoma Space Industry Development Authority at the following addresses:

City of Clinton, P.O. Box 1177, Clinton, Oklahoma 73601.

Oklahoma Space Industry Development Authority, 501 Sooner Drive, Burns Flat, Oklahoma 73624.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Bell, Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–.

The request to transfer airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to transfer property at Clinton-Sherman Airpark under the provisions of the Act.

On August 10, 2006, the FAA determined that the request to transfer property at Clinton-Sherman Airpark submitted by the City of Clinton and Oklahoma Space Industry Development Authority met agency requirements. The FAA may approve the request, in whole or in part, no later than October 1, 2006.

The following is a brief overview of the request:

On October 9, 2003, the City of Clinton, Oklahoma requested the transfer of surface rights of the Clinton-Sherman Airpark to the Oklahoma Space Industry Development Authority (OSIDA). The transfer will enable the State of Oklahoma to expend state funds for capital improvements on the Clinton-Sherman Airpark. OSIDA completed an environmental assessment and FAA issued a Finding of No Significant Impact on May 5, 2006. On June 12, 2006, FAA issued OSIDA Launch Site Operator License LSO 06–010. The subject airport land is subject to covenants prescribed in the release indenture dated June 25, 1971 and grant agreement covenants. The application specifies OSIDA will continue operating the Clinton-Sherman Airport as a public airport for the benefit of civil aviation.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Clinton City Manager's Office.

Issued in Fort Worth, Texas on August 11, 2006.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 06–6989 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Annual Materials Report on New Bridge Construction and Bridge Rehabilitation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 1114 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) continued the highway bridge program to enable States to improve the condition of their highway bridges over waterways, other topographical barriers, other highways, and railroads. Section 1114(f) amends 23 U.S.C. 144 by adding subsection (r), requiring the Secretary of Transportation (Secretary) to publish in the **Federal Register** a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects.

DATES: The report will be posted on the FHWA Web site no later than August 10, 2006.

ADDRESSES: The report will be posted on the FHWA Web site at: *http://www.fhwa.dot.gov/bridge.britab.*

FOR FURTHER INFORMATION CONTACT: Ms. Ann Shemaka, Office of Bridge Technology, HIBT–30, (202) 366–2997, or Mr. Thomas Everett, Office of Bridge Technology, HIBT–30, (202) 366–4675, Federal Highway Administration, 400 Seventh St., 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: In conformance with 23 U.S.C. 144(r), the FHWA has produced a report that summarizes the types of construction materials used in new bridge construction and bridge rehabilitation projects. Data on Federal-aid and non-Federal-aid highway bridges are included in the report for completeness. The December 2005 National Bridge Inventory (NBI) dataset was used to identify the material types for bridges that were new or replaced within the defined time period. The FHWA's Financial Management Information System (FMIS) and the 2005 NBI were used to identify the material types for bridges that were rehabilitated within the defined time period. Currently preventative maintenance projects are included in the rehabilitation totals.

The report, which is available at *http://www.fhwa.dot.gov/bridge/britab,* consists of the following tables:

- Construction Materials for New and Replaced Bridges, a summary report which includes Federal-aid highways and non-Federal-aid highways built in 2003 and 2004.
- Construction Materials for Rehabilitated Bridges, a summary report which includes Federal-aid and non-Federal-aid highways rehabilitated in 2003 and 2004.
- Construction Materials for Combined New, Replaced and Rehabilitated Bridges, a summary report which combines the first two tables cited above.
- Federal-aid Highways: Construction Materials for New and Replaced Bridges 2003, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2003.
- Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2003, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2003.
- Federal-aid Highways: Construction Materials for Rehabilitated Bridges

2003, a detailed State-by-State report with counts and areas for rehabilitated Federal-aid bridges in 2003.

• Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2003, a detailed State-by-State report with counts and areas for rehabilitated non-Federal-aid bridges in 2003.

• Federal-aid Highways: Construction Materials for New and Replaced Bridges 2004, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2004.

• Non-Federal-Aid Highways: Construction Materials for New and Replaced Bridges 2004, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2004.

• Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2004, a detailed State-by-State report with counts and areas for rehabilitated Federal-aid bridges 2004.

• Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2004, a detailed State-by-State report with counts and areas for rehabilitated non-Federal-aid bridges types in 2004.

• Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2003, which combines the 2003 reports on new, replaced and rehabilitated Federal-aid bridges.

• Non-Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2003, which combines the 2003 reports on new, replaced and rehabilitated non-Federal-aid bridges.

• Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2004, which combines the 2004 reports on new, replaced and rehabilitated Federal-aid bridges.

• Non-Federal-aid Highways: Construction Materials for New Replaced and Rehabilitated Bridges 2004, which combines the 2004 reports on new, replaced and rehabilitated non-Federal-aid bridges.

The tables provide data for 2 years: 2003 and 2004. The 2003 data is considered complete for new and rehabilitated bridges, with a minimal likelihood of upward changes in the totals. The 2004 data is considered partially complete for new bridges and complete for rehabilitated bridges, because many new bridges built in 2004 will not appear in the NBI until they are placed into service the following year. Therefore, next year's report will include 2004's data on new bridge construction, because the data will be complete.

Each table displays simple counts of bridges and total bridge deck area. Total bridge deck area is measured in square meters, by multiplying the bridge length by the deck width out-to-out. The data is categorized by the following material types, which are identified in the NBI: steel, concrete, pre-stressed concrete and other. The category ''Other'' includes wood, timber, masonry, aluminum, wrought iron, cast iron and other. Material type is the predominate type for the main span(s).

(Authority: 23 U.S.C. 144(r); Sec. 1114(f), Pub. L. 109–59, 119 Stat. 1144.)

Issued on: August 10, 2006.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E6–13510 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–01–10578, FMCSA–04–17195]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 17, 2006. Comments must be received on or before September 18, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–01–10578, FMCSA–04–17195, using any of the following methods.

• *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers

of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 5 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Manuel A. Almeida, Donald E. Hathaway, Jose M. Suarez, Stephen D. Vice, and Richard A. Yeager.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 69 FR 17267; 69 FR 17263; 69 FR 31447). Each of these 5 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 18, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 5 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its Notices of applications. Those Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 10, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–13591 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2006–25631]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collections:

(1) Nondiscrimination as it Applies to FTA Grant Programs.

(2) Title VI as it Applies to FTA Grant Programs.

The collections involve our Nondiscrimination and Title VI Programs. The information to be collected for the Nondiscrimination Program is necessary to ensure that any employee or applicant for employment is not discriminated against on the basis of race, color, creed, sex, national origin, age or disability. The information to be collected for the Title VI Program is necessary to ensure that service and benefits are provided nondiscriminatorily without regard to race, color, or national origin. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on May 30, 2006.

DATES: Comments must be submitted before September 18, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Nondiscrimination as it Applies to FTA Grant Programs (*OMB Number: 2132–0540*).

Abstract: All entities receiving Federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color,

creed, sex, national origin, age, or disability. To ensure that FTA's equal employment opportunity (EEO) procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that the formulating, submitting, and implementing of EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

Estimated Total Annual Burden: 2,325 hours.

Title: Title VI as it applies to FTA Grant Programs.

Abstract: Section 601 of Title VI of the Civil Rights Act of 1964 states: ''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR part 42, subpart F (section 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving Federal financial assistance. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable

Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Estimated Total Annual Burden: 5,332 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: August 14, 2006.

Ann Linnertz,

Acting Associate Administrator for Administration.

[FR Doc. E6–13570 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Limitation on Claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for public transportation projects in the following urbanized areas: Denver, Colorado; Chicago, Illinois; Cleveland, Ohio; Minneapolis, Minnesota; Pittsburgh, Pennsylvania; Los Angeles, California; and Seattle, Washington. The purpose of this notice is to activate the limitation on any claims that may challenge these final FTA environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Title 23 United States Code (U.S.C.) section 139(l). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph Ossi, Environmental Protection Specialist, Office of Planning and Environment, 202–366–1613. FTA is located at 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA), and in other documents in the FTA administrative record for the project. The final agency environmental decision documents—Records of Decision (RODs) and Findings of No Significant Impact (FONSIs)—for the listed projects are available online at *http://www.fta.dot.gov/planning/environment/planning_environment_documents.html* or may be obtained by contacting the FTA Regional Office for the urbanized area where the project is located. Contact information for the FTA Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, the National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4375], section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q].

The projects and actions that are the subject of this notice are:

1. *Project name and location:* West Corridor Light Rail Transit Project; metropolitan Denver, Colorado. *Project sponsor:* Regional Transportation District. *Project description:* The project is a 12-mile, 12-station light rail transit (LRT) line from the existing light rail line at Auraria West Station (near the Auraria Campus in downtown Denver), west across the South Platte River, then west along the existing Associated Railroad right-of-way (which roughly parallels 13th Avenue), taking a turn to the south at the Lakewood Industrial Park to serve the Denver Federal Center, then west along the south side of 6th Avenue, crossing back to the north to serve the Jefferson County Government Center which is the western terminus of the project. *Final agency actions:* ROD issued April 19, 2004; Section 4(f) finding; Section 106 Memorandum of Agreement; and project-level Air Quality Conformity determination. *Supporting documentation:* Final Environmental Impact Statement issued October 24, 2003.

2. *Project name and location:* Paulina Connector; Chicago, Illinois. *Project sponsor:* Chicago Transit Authority. *Project description:* The Paulina Connector is a rail rapid transit connection on existing railroad right-of-way between the Cermak Branch of the Blue line and the Green line in Paulina. No new stations are planned, but the project will provide operational flexibility and efficiency for service from the west side of Chicago to downtown Chicago and O'Hare Airport. *Final agency actions:* FONSI issued on June 12, 2006; Section 106 Finding of No Adverse Effect; project-level Air Quality Conformity determination. *Supporting documentation:* Environmental Assessment issued May 5, 2006.

3. *Project name and location:* East Side Transit Center; Cleveland, Ohio. Project sponsor: Greater Cleveland Regional Transit Authority. *Project description:* The project is the construction of a bus transfer center on Prospect Avenue and East 21st Street. *Final agency actions:* FONSI issued on April 11, 2006; Section 106 Programmatic Agreement; project-level Air Quality Conformity determination. *Supporting documentation:* Environmental Assessment issued in August 2005.

4. *Project name and location:* Minneapolis Nicollet Hotel Block Project; Minneapolis, Minnesota. *Project sponsors:* City of Minneapolis and the Metropolitan Council. *Project description:* This project includes a below-grade bus layover facility with the capacity for the layover of 26 buses, and an enclosed, at-grade passenger waiting area. A private, mixed-used development with approximately 300 dwelling units, parking and retail space will be located on the first and second floors above the at-grade passenger waiting area. *Final agency actions:* FONSI issued on August 3, 2005; Section 106 Memorandum of Agreement. *Supporting documentation:* Environmental Assessment issued in July 2005.

5. *Project name and location:* Northstar Corridor Commuter Rail Project, Minneapolis to Big Lake, Minnesota. *Project sponsors:* Minnesota Department of Transportation and the Northstar Corridor Development Authority. *Project description:* This project is a 40-mile commuter rail line on existing railroad right-of-way from downtown Minneapolis to Big Lake, Minnesota with stations in downtown Minneapolis, Fridley, Coon Rapids-Riverdale, Anoka, Elk River and Big Lake. The project also includes a light rail transit (LRT) component, which is a four block extension of the existing Hiawatha LRT line from the Warehouse District Station to the downtown Minneapolis Intermodal Station where transfers between the LRT and commuter rail line will occur. *Final agency actions:* ROD issued on December 12, 2002; FONSI on project changes issued on March 15, 2006; Section 4(f) finding; and Section 106 Programmatic Agreement. *Supporting documentation:* Final Environmental Impact Statement issued on April 5, 2002; Environmental Assessment issued on December 22, 2005.

6. *Project name and location:* North Shore Connector, Pittsburgh, Pennsylvania. *Project sponsor:* Port Authority of Allegheny County. *Project description:* The project is a 1.4 mile extension of the light rail transit line from Gateway Center Station in downtown, through a tunnel under the Allegheny River to a terminus just west of Allegheny Avenue on the Pittsburgh North Shore. The project includes three new stations—Gateway, North Side, and Allegheny. *Final agency actions:* Amended ROD issued on June 15, 2006; Section 106 Programmatic Agreement; Section 4(f) finding; project-level Air Quality Conformity determination. *Supporting documentation:* Final Environmental Impact Statement issued May 3, 2002.

7. *Project name and location:* Mid-City/Exposition Corridor Light Rail Transit Project, Los Angeles, California. *Project sponsor:* Los Angeles County Metropolitan Transportation Authority (LACMTA). *Project description:* The Mid-City/Exposition Corridor Project is a light rail transit (LRT) project that will run 8.6 miles from 7th Street/Metro Center Station in downtown Los Angeles to the intersection of Washington and National Boulevards in Culver City. The LRT will operate in a dual-track configuration mainly at-grade on existing streets or in a street-median right-of-way owned by LACMTA. The project includes eight new LRT stations and three grade separations: one below-grade segment at Flower and Figueroa Streets; an aerial segment at La Brea Avenue; and an aerial segment at La Cienega Boulevard, extending over Jefferson Boulevard and the Ballona Creek to Fay Avenue in Culver City. *Final agency actions:* ROD issued on February 24, 2006; Section 106 Finding of No Adverse Effect; project-level Air Quality Conformity determination. *Supporting documentation:* Final Environmental Impact Statement issued on October 14, 2005.

8. *Project name and location:* North Link Light Rail Transit Project, Seattle, Washington. *Project sponsor:* Central Puget Sound Regional Transit Authority (Sound Transit). *Project description:* The project is a 5-station, 7-mile extension of the light rail transit (LRT) system in Seattle. The LRT extension would operate in exclusive right-of-way between Northgate area in north Seattle and downtown Seattle, with stations at Northgate, Roosevelt, the University District, Husky Stadium, and Capitol Hill. *Final agency actions:* ROD issued on June 7, 2006; Section 106 Finding of No Adverse Effect; project-level Air Quality Conformity determination. *Supporting documentation:* Final Environmental Impact Statement issued November 5, 1999; Supplemental Final Environmental Impact Statement issued April 7, 2006.

Issued on: August 10, 2006.

David B. Simpson,

Acting Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E6–13533 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 10, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–060.

Type of Review: Extension.

Title: Letterhead Application and Notices Relating to Tax-Free Alcohol.

Description: Tax-free alcohol is used for non-beverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Use of tax-free alcohol is regulated to prevent illegal diversion to taxable beverage use. Permits/Applications control authorized uses and flow. TTB REC 5150/4 is designed to protect revenue and public safety.

Respondents: Private Sector.

Estimated Total Burden Hours: 2,222 hours.

OMB Number: 1513–0063.

Type of Review: Extension.

Title: Stills: Notices, Registration, and Records TTB REC 5150/8.

Description: The information collection is used to account for and regulate the distillation of distilled spirits to protect the revenue and to provide for identification of distillers.

Respondents: Private Sector.

Estimated Total Burden Hours: 42 hours.

OMB Number: 1513–0066.

Type of Review: Extension.

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices, TTB REC 5170/3Notices.

Description: The primary objectives of this recordkeeping requirement are revenue protection, by establishment of accountability data available for audit purposes and consumer protection, by subject record traceability of alcoholic beverages to the retail liquor dealer level of distribution in the event of defective products. This collection of information is contained in 27 CFR 31.234.

Respondents: Private Sector.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0067.

Type of Review: Extension.

Title: Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations. (Variations in Format or Preparation of Records) TTB REC 5170/6.

Description: This information collection is used by permittees who wish to request a variance. We use written applications, letterheads, and notices to rule on proposed variations from standard requirements, to ascertain that revenue is not placed in jeopardy and to protect the revenue. (Affects wholesale liquor dealers.)

Respondents: Private Sector.

Estimated Total Burden Hours: 515 hours.

OMB Number: 1513–0104.

Type of Review: Extension.

Title: Information Collected in Support of Small Producer's Wine Tax Credit.

Description: TTB collects this information to ensure proper tax credit. The information is used by taxpayers in preparing their returns and by TTB to verify tax computation. Recordkeepers are wine producers who want to transfer their credit to warehouse operators and the transferees who take such credit.

Respondents: Private Sector.

Estimated Total Burden Hours: 2,800 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–13572 Filed 8–16–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 10, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

Community Development Financial Institutions Fund

OMB Number: 1559–XXXX.

Type of Review: New.

Title: Assessment of CDFI Fund Technical Assistance, Financial Assistance, Certification and Training.

Description: The CDFI Fund is conducting an independent assessment on the impact of its FA, TA, Certification and Training Programs via survey of past participants.

Respondents: Private and State, Local or Tribal Government.

Estimated Total Burden Hours: 689 hours.

Clearance Officer: Pamela Williams (202) 622–6355, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–13573 Filed 8–16–06; 8:45 am]

BILLING CODE 4810–70–P

Corrections

Federal Register

Vol. 71, No. 159

Thursday, August 17, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–02–003]

RIN 0581–AC25

Updating Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading

Correction

In rule document 06–6159 beginning on page 42006 in the issue of Monday, July 24, 2006, make the following corrections:

§ 56.1 [Corrected]

1. On page 42007, in the first column, in § 56.1, in amendatory instruction 2.A., ''Service'' should read ''*Service*''.

§56.9 [Corrected]

2. On page 42008, in the first column, in § 56.9(b), in the table, in the second column, in the ninth entry, ''56.52(a)(l)'' should read ''56.52(a)(1)''.

[FR Doc. C6–6159 Filed 8–16–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Draft Environmental Assessment for an Airspace Proposal in the Ft. Campbell, KY Area

Correction

In notice document 06–6790 appearing on page 45536 in the issue of Wednesday, August 9, 2006, make the following corrections:

1. In the first column, the subagency heading should read as set forth above.

2. In the second column, under **SUPPLEMENTARY INFORMATION**, under paragraph 2., in entry (1), in the first line ''Dial Corty'' should read ''Dial Cordy''.

[FR Doc. C6–6790 Filed 8–16–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 17, 2006

Part II

Department of Agriculture

Office of Energy Policy and New Uses

7 CFR Part 2902

Designation of Biobased Items for Federal Procurement; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA30

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to add 10 sections to designate the following 10 items within which biobased products would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: Adhesive and mastic removers; insulating foam for wall construction; hand cleaners and sanitizers; composite panels; fluid-filled transformers; biodegradable containers; fertilizers; metalworking fluids; sorbents; and graffiti and grease removers. USDA also is proposing minimum biobased content for each of these items. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

DATES: USDA will accept public comments on this proposed rule until October 16, 2006.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA30. Also, please identify submittals as pertaining to the ''Proposed Designation of Items.''

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *fb4p@oce.usda.gov.* Include RIN number 0503–AA30 and ''Proposed Designation of Items'' on the subject line. Please include your name and address in your message.
- Mail/commercial/hand delivery: Mail or deliver your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815.
- Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 401–4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov;* phone (202) 401–0461. Information regarding the Federal Biobased Products Preferred Procurement Program is available on the Internet at *http://www.biobased.oce.usda.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Today's Proposed Rulemaking
IV. Designation of Items, Minimum Biobased Contents, and Time Frame
  A. Background
  B. Items Proposed for Designation
  C. Minimum Biobased Contents
  D. Effective Date for Procurement Preference and Incorporation Into Specifications
V. Where Can Agencies Get More Information on These USDA-Designated Items?
VI. Regulatory Information
  A. Executive Order 12866: Regulatory Planning and Review
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
  D. Executive Order 12988: Civil Justice Reform
  E. Executive Order 13132: Federalism
  F. Unfunded Mandates Reform Act of 1995
  G. Executive Order 12372: Intergovernmental Review of Federal Programs
  H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  I. Paperwork Reduction Act
  J. Government Paperwork Elimination Act Compliance

I. Authority

The designation of these items is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

Section 9002 of FSRIA, as amended by section 943 of the Energy Policy Act of 2005, Public Law 109–58 (Energy Policy Act), provides for the preferred procurement of biobased products by procuring agencies. Section 943 of the Energy Policy Act amended the definitions section of FSRIA, 7 U.S.C. 8101, by adding a definition of ''procuring agency'' that includes both Federal agencies and ''any person contracting with any Federal agency with respect to work performed under that contract.'' The amendment also made Federal contractors, as well as Federal agencies, expressly subject to the procurement preference provisions of section 9002 of FSRIA. However, because this program requires agencies to incorporate the preference for biobased products into procurement specifications, the statutory amendment makes no substantive change to the program. USDA amended the Guidelines to incorporate the new definition of ''procuring agency'' through an interim final rule.

Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program. In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002 also requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items

and, under section 9002(e)(1)(C), to recommend where appropriate the minimum level of biobased content to be contained in the procured products.

Overlap with EPA Comprehensive Procurement Guidelines program for recovered content products. Some of the biobased items designated for preferred procurement may overlap with products designated under the Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines program for recovered content products. Where that occurs, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product. In situations where USDA believes there may be an overlap, it plans to ask manufacturers of qualifying biobased products to provide additional product and performance information including the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers may also be asked to provide other types of information, such as whether the product contains petroleum-, coal-, or natural gas-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and human health measures and life cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM International (ASTM) Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will assist Federal agencies in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products and will be available on USDA's Web site with its catalog of qualifying biobased products.

Where a biobased item is used for the same purposes and to meet the same requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, that biobased hydraulic fluid is to be used to address certain environmental or health requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

Federal Government Purchase of ''Green'' Products. Three components of the Federal government's green purchasing program are the Biobased Products Preferred Purchasing Program, the Environmental Protection Agency's Comprehensive Procurement Guidelines for products containing recovered materials, and the Environmentally Preferable Products Program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

In the case of cleaning products, procuring agencies should note that not all biobased products are ''environmentally preferable.'' Unless the cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that products have been reformulated in accordance with recommendations from the U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkylphenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

On the other hand, some biobased products may be better for the environment than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with the DfE program. To fully compare products, one must look at the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their ''cradle-to-grave'' impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new fossil carbon into the atmosphere, whereas non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere.

Manufacturers of qualifying biobased products under the Federal Biobased Products Preferred Procurement Program (FB4P) will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the BEES analysis, which examines 11 different environmental parameters, including human health, or the comparable ASTM D7505. Therefore, USDA encourages Federal procurement agencies to examine all available information on the environmental and human health effects of cleaning products when making their purchasing decisions.

Green Building Council. More than a dozen Federal agencies use the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating Systems for new construction, building renovation, and building operation and maintenance. The systems provide criteria for implementing sustainable design principles in building design, construction, operation, and maintenance. Points are assigned to each criterion, and building projects can be certified as ''certified,'' ''silver,'' ''gold,'' or ''platinum,'' depending on the number of points for which the project qualifies. LEED for New Construction and Major Renovations (LEED–NC) includes a ''Materials & Resources'' criterion, with one point allocated for the use of rapidly renewable materials. Thus, the use of biobased construction products can help agencies obtain LEED certification for their building construction projects.

Interagency Council. USDA has created, and is chairing, an ''interagency council,'' with membership selected from among Federal stakeholders to the FB4P. To augment its own research, USDA consults with this council in identifying the order of item designation, manufacturers producing and marketing products that fall within an item proposed for designation, performance standards used by Federal agencies evaluating products to be procured, and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

III. Summary of Today's Proposed Rulemaking

Today, USDA is proposing to designate the following 10 items for

preferred procurement: Adhesive and mastic removers; insulating foam for wall construction; hand cleaners and sanitizers; composite panels; fluid-filled transformers; biodegradable containers; fertilizers; metalworking fluids; sorbents; and graffiti and grease removers. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

In today's proposed rulemaking, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life cycle costs for each of the 10 designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these 10 items is not presented in this notice. Further, USDA has reached an agreement with manufacturers not to publish their names in the **Federal Register** when designating items. This agreement was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers of products within the designated item to voluntarily post their names and other contact information on the USDA FB4P Web site.

Warranties. Some of the items being proposed for designation today may affect maintenance warranties. As time and resources allow, USDA will work with manufacturers on addressing any effect the use of biobased products may have on maintenance warranties. At this time, however, USDA does not have information available as to whether or not the manufacturers will state that the use of these products will void maintenance warranties. USDA encourages manufacturers of biobased products to work with original equipment manufacturers (OEMs) to ensure that biobased products will not void maintenance warranties when used. USDA is willing to assist manufacturers of the biobased products, if they find that existing performance standards for maintenance warranties are not relevant or appropriate for biobased products, in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. If despite these efforts there is insufficient information regarding the use of a biobased product and its effect on maintenance warranties, USDA notes that the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on its FB4P Web site.

Additional Information. USDA is working with manufacturers and vendors to post all relevant product and manufacturer contact information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through email and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: *http://www.biobased.oce.usda.gov*.

Comments. USDA invites comment on the proposed designation of these 10 items, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. Four of the items being proposed for designation (insulating foam, composite panels, fertilizers, and sorbents) may overlap with products designated under EPA's Comprehensive Procurement Guidelines for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting from manufacturers and users product specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material, as well as non-biobased products. USDA will post this information on the FB4P Web site.

2. We are proposing a single item designation for hand cleaners and sanitizers. We are seeking comment as to whether there are different performance standards for this item and, if so, whether USDA should consider either creating subcategories within this item, each with its own minimum biobased content, or limiting the scope of the current item and proposing one or more new items for hand cleaners and sanitizers. In your comments, please be sure to identify specific performance standards and rationale for either subdividing the current proposed item or for limiting the scope of the current proposed item and proposing one or more new items for hand cleaners and sanitizers.

3. We are proposing a single minimum biobased content for the item insulation foam for wall construction. The proposed minimum biobased content is based on two measured biobased contents, one for a spray foam product and one for a rigid foam product. USDA is interested in receiving comments as to whether USDA should set a minimum biobased content for spray foam products and one for rigid foam products. Please be sure to provide your rationale for your comments.

4. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

5. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the FB4P Web site. This information will then be available to Federal procuring agencies and will assist them in making ''best value'' purchase decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

To assist you in developing your comments, the background information used in proposing these items for designation can be found on the FB4P Web site. All comments should be submitted as directed in the **ADDRESSES** section above.

IV. Designation of Items, Minimum Biobased Contents, and Time Frame

A. Background

In order to designate items (generic groupings of specific products such as crankcase oils or products that contain qualifying biobased fibers) for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items; and (2) the economic and technological feasibility of using the items, including the life cycle costs of the items.

In considering an item's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Biobased Manufacturers Association) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts individual manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering an item's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its cost and performance characteristics. This information is obtained from the sources used to assess an item's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life cycle costs of items proposed for designation, USDA uses the BEES analytical tool to test individual products within each proposed item. (Detailed information on this analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*) The BEES analytical tool measures the environmental performance and the economic performance of a product.

Environmental performance is measured in the BEES analytical tool using the internationally-standardized and science-based life cycle assessment approach specified in the International Organization for Standardization (ISO) 14000 standards. The BEES environmental performance analysis includes human health as one of its components. All stages in the life of a product are analyzed: Raw material production; manufacture; transportation; installation; use; and recycling and waste management. The time period over which environmental performance is measured begins with raw material production and ends with disposal (waste management). The BEES environmental performance analysis also addresses products made from biobased feedstocks.

Economic performance in the BEES analysis is measured using the ASTM standard life cycle cost method (ASTM E917), which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal. The time frame for economic performance extends from the purchase of the product to final disposal.

USDA then utilizes the BEES results of individual products within a designated item in its consideration of the life cycle costs at the item level. There is a single unit of comparison associated with each designated item. The basis for the unit of comparison is the ''functional unit,'' defined so that the products compared are true substitutes for one another. If significant differences have been identified in the useful lives of alternative products within a designated item (*e.g.*, if one product lasts twice as long as another), the functional unit will include reference to a time dimension to account for the frequency of product replacement. The functional unit also will account for products used in different amounts for equivalent service. For example, one surface coating product may be environmentally and economically preferable to another on a pound-for-pound basis, but may require twice the mass to cover one square foot of surface, and last half as long, as the other product. To account for these performance differences, the functional unit for the surface coating item could be ''one square foot of application for 20 years'' instead of ''one pound of surface coating product.'' The functional unit provides the critical reference point to which all BEES results for products within an item are scaled. Because functional units vary from item to item, performance comparisons are valid only among products within a designated item.

The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at *http://www.biobased.oce.usda.gov.*

As discussed above, the BEES analysis includes information on the environmental performance, human health impacts, and economic performance. In addition, ASTM D7505, which manufacturers may use in lieu of the BEES analytical tool, provides similar information. USDA is working with manufacturers and vendors to post this information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred procurement program more efficient. As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to post this information, including manufacturer contact information, on the FB4P Web site to make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering from manufacturers of biobased products being considered for designation information on industry standard test methods that they are using to evaluate the functional performance of their products. Additional standards are also being identified during meetings of the Interagency Council and during the review process for each proposed rule. We have listed under the detailed discussion of each item proposed for designation (presented in Section IV.B) the functional performance test methods identified during the development of this **Federal Register** notice for these 10 items. While this process identifies many of the relevant standards, USDA recognizes that the performance test methods identified herein do not represent all of the methods that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the FB4P Web site.

In gathering information relevant to the analyses discussed above, USDA has made extensive efforts to contact and request information and product samples from representatives of all known manufacturers of products

within the items proposed for designation. However, because the submission of information is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who were willing voluntarily to invest the resources required to gather and submit the information and samples. USDA used the samples to test for biobased content and the information to conduct the BEES analyses. The data presented are all the data that were submitted in response to USDA requests for information from all known manufacturers of the products within the 10 items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted are sufficient to support designation of the items in today's proposed rulemaking.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life cycle costs. For some items, there may be numerous products available. For other items, there may be very few products currently available. Given the infancy of the market for some items, it is not unexpected that even single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined that the identification of two or more biobased products within an item, or even a single product with two or more suppliers, is sufficient to consider the designation of that item. Similarly, the documented availability, benefits, and life cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

B. Items Proposed for Designation

USDA uses a model (as summarized below) to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the USDA biobased program Web site at *http://www.biobased.oce.usda.gov.*

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and independent manufacturers. These evaluations begin by asking the following questions about the products within an item:

- Are they cost competitive with non-biobased products?
- Do they meet industry performance standards?
- Are they readily available on the commercial market?

In addition to these primary concerns, USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular item?
- Are there a number of manufacturers producing biobased products in this item?
- Are there products available in this item?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will an item create a high demand for biobased feed stock?
- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for groups of approximately 10 items, a new rulemaking package will be developed to designate the items within that group. The list of items may change, with items being added or dropped, and the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rulemaking, USDA is proposing to designate 10 items for the preferred procurement program: Adhesive and mastic removers; insulating foam for wall construction; hand cleaners and sanitizers; composite panels; fluid-filled transformers; biodegradable containers; fertilizers; metalworking fluids; sorbents; and graffiti and grease removers. USDA has determined that each of these 10 items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these 10 items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life cycle costs.

Mature Markets. Section 2902.5(c)(2) of the final guidelines states that USDA will not designate items for preferred procurement that are determined to have mature markets. Mature markets are described as items that had significant national market penetration in 1972. USDA contacted manufacturers, manufacturing associations, and industry researchers to determine if, in 1972, biobased products had a significant market share within any of the items proposed for designation today. USDA found that biobased products within none of the 10 items proposed for designation today had a significant market share in 1972 and that, generally, the companies that produce biobased products within these proposed designated items have been in business for only 10 to 20 years.

Overlap with EPA-Designated Recovered Content Products. In today's proposed rule, 4 of the 10 items may overlap with EPA-designated recovered content products. These four items are: Insulating foam, composite panels, fertilizers, and sorbents. For these four items, USDA is requesting that certain information on the qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining if an overlap exists between the qualifying biobased product and the applicable EPA-designated recovered content product. As noted earlier in this preamble, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the FB4P Web site.

Exemptions. When proposing items for preferred procurement under the FB4P, USDA will identify, on an item-by-item basis, items that would be exempt from preferred procurement on

the basis of their use in products and systems designed or procured for combat or combat-related missions. USDA believes it is inappropriate to apply the biobased purchasing requirement to tactical equipment unless the Department of Defense has documented that these products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment needs. After evaluating these situations for each of the 10 items being proposed for designation, USDA is proposing to exempt fluid-filled transformers from preferred procurement under the FB4P when used in combat or combat-related missions.

USDA is proposing an exemption for all designated items when used in spacecraft systems and launch support equipment, because failure of such items could lead to catastrophic consequences. Many, if not all, items that USDA is or is planning to designate for preferred procurement are or will be used in space applications. Frequently, such applications used these items in ways that are different from their more ''conventional'' use on Earth. It is difficult, if not impossible, to forecast what situations may occur when these items are used in space and how they will perform. Therefore, USDA believes is it reasonable to limit the preferred procurement program to items used in more conventional applications and is proposing to exempt all designated items used in space applications from the FB4P.

For each item being proposed for exemption, the exemption does not extend to contractors performing work for DoD or NASA. For example, if a contractor is producing a part for use on the space shuttle, the metalworking fluid the contractor uses to produce the part should be biobased (provided it meets the specifications for metalworking). The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space applications. For example, if the part being produced by the contractor would actually be part of the space shuttle, then the exemption applies.

Each of the 10 proposed designated items are discussed in the following sections.

1. Adhesive and Mastic Removers

Adhesive and mastic removers represent that group of industrial cleaning solvent products formulated for use in removing asbestos, carpet, and ceramic tile mastics as well as adhesive materials, including glue, tape, and gum, from various surface types. Products in this item eliminate the need to sand and grind glue and adhesives from parts, floors, or walls, significantly reducing the time required on a project. These products are typically formulated from natural soy-based or citrus-based feedstocks.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased adhesive and mastic removers, USDA identified 11 different manufacturers producing 13 individual biobased products. These 11 manufacturers do not necessarily include all manufacturers of biobased adhesive and mastic removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products is being used commercially. Using the procedure described earlier in this notice, no industry standard performance tests were identified by the manufacturers who submitted information on these products or others.

USDA contacted procurement officials with various procuring agencies, including the General Services Administration, several offices within the Defense Logistics Agency, OFEE, USDA Departmental Administration, the National Park Service, the EPA, Oak Ridge National Laboratory, and OMB, in an effort to gather information on the purchases of products within the 10 items proposed for designation today. Communications with these officials lead to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products is not possible at this time. Most of the contacted officials reported that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products.

USDA also investigated the Web site *http://www.fedbizopps.gov*, a site which lists Federal contract purchase opportunities greater than $25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's rulemaking. Therefore, USDA has been unable to obtain data on the amount of adhesive and mastic removers purchased by procuring agencies. However, Federal agencies routinely procure building construction, renovation, cleaning, and repair services and materials, including adhesive and mastic removers. Thus, they have a need for adhesive and mastic removers and for services that require the use of adhesive and mastic removers. Designation of adhesive and mastic removers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased adhesive and mastic removers was performed for two of the products using the BEES analytical tool. Table 1 summarizes the BEES results for the two adhesive and mastic removers. As seen in Table 1, the environmental performance score, which includes human health, ranges from 0.0257 to 0.0625 points per gallon. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of the product, expressed in 100ths of 1 percent. For example, the total amount of criteria air pollutants emitted in the U.S. in one year was divided by the total U.S. population to derive a ''criteria air pollutants per person value.'' The production and use of one gallon of adhesive and mastic remover sample A was estimated to contribute 0.000002 percent of this value.

TABLE 1.—SUMMARY OF BEES RESULTS FOR ADHESIVE AND MASTIC REMOVERS

Parameters	Adhesive and mastic removers	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0257	0.0625
Acidification (5%)	0.0000	0.0000

TABLE 1.—SUMMARY OF BEES RESULTS FOR ADHESIVE AND MASTIC REMOVERS—Continued

Parameters	Adhesive and mastic removers	
	Sample A	Sample B
Criteria Air Pollutants (6%)	0.0002	0.0007
Ecological Toxicity (11%)	0.0052	0.0170
Eutrophication (5%)	0.0015	0.0111
Fossil Fuel Depletion (5%)	0.0110	0.0157
Global Warming (16%)	0.0035	0.0062
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0025	0.0085
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0011	0.0019
Water Intake (3%)	0.0007	0.0014
Economic Performance (Life Cycle Costs($)) [2]	15.99	17.66
First Cost	15.99	17.66
Future Cost (3.9%)	([3])	([3])
Functional Unit	1 gallon.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

When evaluating the information presented in Table 1, as well as in the subsequent tables presented in this preamble, the reader should be aware that comparisons of the environmental performance scores are valid only among products within a designated item. Thus, comparisons of the scores presented in Table 1 and the scores presented in Tables 2 through 10 for other proposed designated items in this preamble are not meaningful.

The numbers in parentheses following each of the 12 environmental impacts listed in the tables in this preamble indicate weighting factors. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

Life cycle costs presented in Tables 1 through 10 in this preamble are per the appropriate functional unit for the proposed designated item. The life cycle costs of the submitted adhesive and mastic removers range from $15.99 to $17.66 (present value dollars) per gallon. Present value dollars presented in this preamble represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented in this preamble reflect 2005 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. Future costs are discounted to present value using the OMB discount rate of 3.9 percent.

The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at *http://www.biobased.oce.usda.gov.*

2. Insulating Foam for Wall Construction

Insulating foam for wall construction represents that group of products designed as spray-in-place insulation systems for residential or commercial construction applications. Products in this item provide a sealed thermal barrier, which significantly simplifies construction and reduces the effort required on a project. Biobased insulating foams are typically formulated from natural soy-based feedstocks.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Construction—Building Insulation.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased insulating foam for wall construction, USDA identified 14 different manufacturers producing 21 individual biobased products. These 14 manufacturers do not necessarily include all manufacturers of biobased insulating foam for wall construction, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM E84–05, Standard Test Method for Surface Burning Characteristics of Building Materials;
- ASTM C177–04, Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;
- ASTM E283–04, Standard Test Method for Determining Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Specimen;
- ASTM D1622–03, Standard Test Method for Apparent Density of Rigid Cellular Plastics;
- ASTM E96/E96M–05, Standard Test Methods for Water Vapor Transmission of Materials;
- ASTM 90–04, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements;
- ASTM C423–02a, Standard Test Method for Sound Absorption and Sound Absorption Coefficients by the Reverberation Room Method;

• ASTM C518–04, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus; and
• ASTM E84–05e1, Standard Test Method for Surface Burning Characteristics of Building Materials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely procure building construction, renovation, and repair services and materials, including insulating foam for wall construction. Thus, they have a need for insulating foam for wall construction and for services that require the use of insulating foam for wall construction. Designation of insulating foam for wall construction will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased insulating foam for wall construction was performed for one of the products using the BEES analytical tool. Table 2 summarizes the BEES results for the one sample of insulating foam for wall construction. As seen in Table 2, the environmental performance score, which includes human health, was 0.0018 points for a quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to the quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years, expressed in 100ths of 1 percent.

TABLE 2.—SUMMARY OF BEES RESULTS FOR INSULATING FOAM FOR WALL CONSTRUCTION

Parameters	Insulating foam for wall construction
BEES Environmental Performance—Total Score [1]	0.0018
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0000
Ecological Toxicity (11%)	0.0002
Eutrophication (5%)	0.0000
Fossil Fuel Depletion (5%)	0.0009
Global Warming (16%)	0.0002
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0003
Indoor Air (11%)	0.0000
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0001
Water Intake (3%)	0.0001
Economic Performance (Life Cycle Costs($)) [2]	1.10
First Cost	1.15
Future Cost (3.9%) [3]	−0.05
Functional Unit	([4])

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] Note that because this product has a residual (or salvage) value after its initial use, the future cost is a negative value.
[4] The quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years.

The life cycle cost of the submitted insulating foam for wall construction was $1.10 (present value dollars) for a quantity of material necessary to provide one square foot of insulated wall surface for a period of 50 years.

3. Hand Cleaners and Sanitizers

Hand cleaners and sanitizers represent that group of personal care products formulated for use in cleaning and sanitizing human hands. Products in this item, which may be used with or without water, are used to remove a variety of different soils, greases, and bacteria. These products significantly reduce the potential for transmitting harmful bacteria. Biobased hand cleaners and sanitizers are typically formulated from natural corn, soy, or citrus-based feedstocks.

Procuring agencies should note that, as discussed in section II of this preamble, not all biobased cleaning products are ''environmentally preferable'' to non-biobased products. Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, Federal agencies must compare the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of both biobased and non-biobased products.

As noted earlier in this preamble, USDA is requesting comment on whether there should be one or more subcategories within this item based on required performance properties of the item. For example, hand cleaners and sanitizers used in medical situations might be required to meet different performance standards from those used in households. If this is the case, then there may be differences in the level of biobased content depending on the performance standard to be met. As proposed, USDA is not differentiating between settings in which hand cleaners and sanitizers are used.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased hand cleaners and sanitizers, USDA identified 36 different manufacturers producing 73 individual biobased products. These 36 manufacturers do not necessarily include all manufacturers of biobased hand cleaners and sanitizers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist,

applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- American Type Culture Collection Number 11229, Organism: Escherichia coli (Migula) Castellani, and Chalmers; and
- American Type Culture Collection Number 6539 Organism: Salmonella enterica subsp. enterica (ex Kauffmann and Edwards) Le Minor and Popoff serovar Typhi; deposited as Salmonella typhi (Schroeter) Warren and Scott.

Some products within this item may require ''higher'' standards than other products. For example, hand cleaners and sanitizers used in hospitals and medical clinics may require higher levels of performance than those used in typical households. Procuring agencies, therefore, may need to contact the manufacturer of a biobased product or access the FB4P Web site to obtain additional information on the performance specification of a product within this item.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely procure washroom and janitorial services and materials, including hand cleaners and sanitizers. Thus, they have a need for hand cleaners and sanitizers and for services that require the use of hand cleaners and sanitizers. Designation of hand cleaners and sanitizers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased hand cleaners and sanitizers was performed for three of the products using the BEES analytical tool. Table 3 summarizes the BEES results for the three hand cleaners and sanitizers. As seen in Table 3, the environmental performance score, which includes human health, ranges from 0.0227 to 0.0412 points per gallon of hand cleaner and sanitizer. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of the product, expressed in 100ths of 1 percent.

TABLE 3.—SUMMARY OF BEES RESULTS FOR HAND CLEANERS AND SANITIZERS

Parameters	Hand cleaners and sanitizers		
	Sample A	Sample B	Sample C
BEES Environmental Performance—Total Score [1]	0.0227	0.0347	0.0412
Acidification (5%)	0.0000	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0001	0.0002	0.0004
Ecological Toxicity (11%)	0.0112	0.0128	0.0125
Eutrophication (5%)	0.0007	0.0034	0.0052
Fossil Fuel Depletion (5%)	0.0063	0.0077	0.0102
Global Warming (16%)	0.0015	0.0028	0.0047
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.0017	0.0053	0.0058
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.0008	0.0015	0.0014
Water Intake (3%)	0.0004	0.0010	0.0010
Economic Performance (Life Cycle Costs ($)) [2]	17.02	17.30	21.24
First Cost	17.02	17.30	21.24
Future Cost (3.9%)	(3)	(3)	(3)
Functional Unit	1 gallon.		

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted hand cleaners and sanitizers range from $17.02 to $21.24 (present value dollars) per gallon.

4. Composite Panels

Composite panels represent that group of engineered products designed for use in non-structural construction applications, including wall panels, shelving, decorative panels, lavatory dividers, and exterior signs. Biobased composite panels are typically formulated from natural wheat or rice straw, recycled or forest clean-up wood, and paper industry wastes. This item applies to both interior and exterior applications. However, some products within this item may not be applicable to all exterior applications, which may require specific insulating values and moisture protection properties. Procuring agencies, therefore, need to assess an individual product's performance specifications before using in exterior applications.

Qualifying products within this item may overlap with the following three EPA-designated recovered content product: Construction—Laminated Paperboard and Structural Foam Board; Construction—Shower and Restroom Dividers; and Miscellaneous Products—Signage.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased composite panels, USDA identified 26 different manufacturers producing 51 individual biobased products. These 26 manufacturers do not necessarily include all manufacturers of biobased composite panels, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

• ASTM C473–03, Standard Test Methods for Physical Testing of Gypsum Panel Products;

• ASTM D1037–99, Standard Test Methods for Evaluating Properties of Wood-Base Fiber and Particle Panel Materials;

• ASTM D3273–00, Standard Test Method for Resistance to Growth of Mold on the Surface of Interior Coatings in an Environmental Chamber;

• ASTM D4060–01, Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser;

• ASTM E72–05, Standard Test Methods of Conducting Strength Tests of Panels for Building Construction;

• ASTM E84–05, Standard Test Method for Surface Burning Characteristics of Building Materials

• ASTM E90–04, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements;

• ASTM E119–00a, Standard Test Methods for Fire Tests of Building Construction and Materials; and

• ASTM E413–04, Classification for Rating Sound Insulation.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely procure building construction, renovation, and repair services and materials, including composite panels. Thus, they have a need for composite panels and for services that require the use of composite panels. Designation of composite panels will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased composite panels was performed for two of the products using the BEES analytical tool. Table 4 summarizes the BEES results for the two composite panels. As seen in Table 4, the environmental performance score, which includes human health, ranges from 0.0085 to 0.0113 points per square foot of partition for a period of 50 years. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one square foot of partition for a period of 50 years, expressed in 100ths of 1 percent.

TABLE 4.—SUMMARY OF BEES RESULTS FOR COMPOSITE PANELS

Parameters	Composite panels	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0085	0.0113
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0001	0.0001
Ecological Toxicity (11%)	0.0004	0.0010
Eutrophication (5%)	0.0001	0.0001
Fossil Fuel Depletion (5%)	0.0044	0.0055
Global Warming (16%)	0.0012	0.0016
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0017	0.0026
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0004	0.0004
Water Intake (3%)	0.0002	0.0000
Economic Performance (Life Cycle Costs ($)) [2]	2.37	4.96
First Cost	2.37	4.96
Future Cost (3.9%)	([3])	([3])
Functional Unit	one square foot of partition over 50 years.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted composite panels range from $2.37 to $4.96 (present value dollars) per square foot of partition for a period of 50 years.

5. Fluid-Filled Transformers

Fluid-filled transformers represent that group of electric power transformers designed to utilize a dielectric (non-conducting) fluid as a means of insulating and cooling the electro-mechanical equipment inside the transformer.

The electro-mechanical components of a fluid-filled transformer are the same between fluid-filled transformers, with only the type of fluid varying. The dielectric fluid used in fluid-filled transformers is the only component that is a biobased material. Therefore, the information presented in this preamble is based on analyses performed on biobased transformer fluids. However, USDA is proposing to designate the item as ''fluid-filled transformers,'' because end users generally purchase ready-to-use transformers rather than purchasing the electro-mechanical components separately from the fluid. Biobased transformer fluids are typically formulated from vegetable oils, such as soybean oil.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

USDA identified 5 different manufacturers producing 12 individual biobased products that are used as transformer fluids in fluid-filled transformers. These five manufacturers do not necessarily include all manufacturers of biobased transformer fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance

standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D287–92 (2000) e1, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2882–00, Standard Test Method for Indicating the Wear Characteristics of Petroleum and Non-Petroleum Hydraulic Fluids in Constant Volume Vane Pump (Withdrawn 2003);
- American Petroleum Institute API GL–3, Lubricant with light EP effect for transmissions and non-hypoid gear drives;
- General Motors GM LS–2, General Motors Maintenance Lubricant Standard LS–2 for Industrial Equipment and Machine Tools;
- German Institute for Standardization DIN51524, Pressure fluids; hydraulic oils; HL, HLP, and HVLP hydraulic oils; minimum requirements.
- ASTM D1816, Standard Test Method for Dielectric Breakdown Voltage of Insulating Oils of Petroleum Origin Using VDE Electrodes;
- ASTM D877–02e1, Standard Test Method for Dielectric Breakdown Voltage of Insulating Liquids Using Disk Electrodes;
- ASTM D924–04, Standard Test Method for Dissipation Factor (or Power Factor) and Relative Permittivity (Dielectric Constant) of Electrical Insulating Liquids;
- ASTM D1169–02, Standard Test Method for Specific Resistance (Resistivity) of Electrical Insulating Liquids;
- ASTM D3300–00, Standard Test Method for Dielectric Breakdown Voltage of Insulating Oils of Petroleum Origin Under Impulse Conditions;
- ASTM D2300–00, Standard Test Method for Gassing of Insulating Liquids Under Electrical Stress and Ionization (Modified Pirelli Method);
- ASTM D1298–99 (2005), Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method;
- ASTM D971–99a (2004), Standard Test Method for Interfacial Tension of Oil Against Water by the Ring Method;
- EPA 9045C, Corrosivity and pH Determination;
- ASTM D974–04, Standard Test Method for Acid and Base Number by Color-Indicator Titration;
- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM 1533B, Water in Insulating Fluids;
- CPS Method, Percent Saturation of Moisture;
- ASTM D2779–92 (2002), Standard Test Method for Estimation of Solubility of Gases in Petroleum Liquids;
- ASTM D1524–94 (2004), Standard Test Method for Visual Examination of Used Electrical Insulating Oils of Petroleum Origin in the Field;
- ASTM D1500–04a, Standard Test Method for ASTM Color of Petroleum Products (ASTM Color Scale);
- ASTM D93–02a, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester;
- ASTM D92–05a, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D97–05a, Standard Test Method for Pour Point of Petroleum Products;
- ASTM D2766–95 (2005), Standard Test Method for Specific Heat of Liquids and Solids;
- ASTM E1269–05 Standard Test Method for Determining Specific Heat Capacity by Differential Scanning Calorimetry;
- APHA SM 5210B, (APHA = American Public Health Association)
- Biochemical Oxygen Demand (BOD);
- EPA OPPTS 835.3100, Fate, Transport, and Transformation Test Guidelines for Aerobic Aquatic Biodegradation and Anaerobic Biodegradability of Organic Chemicals; and
- OECD G.L 203, Acute Toxicity Test (Trout Fry).

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, many Federal facilities utilize, or contract for services that utilize, transformers as part of their electrical distribution systems. Thus, Federal agencies have a need for fluid-filled transformers and for services that require the use of fluid-filled transformers. Designation of fluid-filled transformers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased transformer fluids was performed for two of the products using the BEES analytical tool. Table 5 summarizes the BEES results for the two biobased transformer fluids. As seen in Table 5, the environmental performance score, which includes human health, ranges from 0.0198 to 0.0581 points per gallon of the transformer fluids. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1 gallon of transformer fluid, expressed in 100ths of 1 percent.

TABLE 5.—SUMMARY OF BEES RESULTS FOR FLUID-FILLED TRANSFORMERS

Parameters	Transformer fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0198	0.0581
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0003
Ecological Toxicity (11%)	0.0046	0.0204
Eutrophication (5%)	0.0007	0.0066
Fossil Fuel Depletion (5%)	0.0066	0.0130
Global Warming (16%)	0.0033	0.0052
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0029	0.0047
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0007	0.0040
Water Intake (3%)	0.0008	0.0039
Economic Performance (Life Cycle Costs ($)) [2]	8.50	9.10
First Cost	8.50	9.10

TABLE 5.—SUMMARY OF BEES RESULTS FOR FLUID-FILLED TRANSFORMERS—Continued

Parameters	Transformer fluids	
	Sample A	Sample B
Future Cost (3.9%)	(3)	(3)
Functional Unit	1 gallon.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted biobased transformer fluids range from $8.50 to $9.10 (present value dollars) per gallon of transformer fluid.

6. Biodegradable Containers

Biodegradable containers represent that group of products capable of complying with the specifications established in the biodegradability standard ASTM D6400 ''Standard Specifications for Compostable Plastics'' and designed to be used for temporary storage or transportation of materials, such as food items. Products in this item are typically used by quick-serve restaurants, food management companies, universities, and government organizations. Biobased biodegradable containers are typically produced from natural starch-based or synthetic corn-based feedstocks and are readily biodegradable through composting.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased biodegradable containers, USDA identified four different manufacturers producing six individual biobased products. These four manufacturers do not necessarily include all manufacturers of biobased biodegradable containers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D6400–04, Standard Specification for Compostable Plastics; and
- Biodegradable Products Institute Certified Compostable plastic products will biodegrade and compost satisfactorily in actively managed compost facilities.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure contract services to perform, activities such as food preparation and materials storage that utilize containers. Thus, they have a need for containers and for services that require the use of containers. Designation of biodegradable containers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased biodegradable containers was performed for two of the products using the BEES analytical tool. Table 6 summarizes the BEES results for the two biodegradable containers. As seen in Table 6, the environmental performance score, which includes human health, ranges from 0.0003 to 0.0008 points per biodegradable container. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one biodegradable container, expressed in 100ths of 1 percent.

TABLE 6.—SUMMARY OF BEES RESULTS FOR BIODEGRADABLE CONTAINERS

Parameters	Biodegradable containers	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0003	0.0008
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0000	0.0000
Ecological Toxicity (11%)	0.0002	0.0001
Eutrophication (5%)	0.0000	0.0000
Fossil Fuel Depletion (5%)	0.0001	0.0004
Global Warming (16%)	0.0000	0.0001
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0000	0.0001
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0000	0.0000
Water Intake (3%)	0.0000	0.0001
Economic Performance (Life Cycle Costs ($)) [2]	0.05	0.10
First Cost	0.05	0.10
Future Cost (3.9%)	(3)	(3)
Functional Unit	1 biodegradable container.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted biodegradable containers range from $0.05 to $0.10 (present value dollars) per biodegradable container.

7. Fertilizers

Fertilizers represent that group of products formulated or processed for use in soil improvement applications. Products in this item provide moisture holding capacity, nutrients for plant growth, and/or beneficial bacteria to convert nutrients into plant usable forms. These products are used to provide added nutrition to the sports turf, golf course, organic farming, horticulture, lawn care, landscape, and nursery industries. Biobased fertilizers are typically produced from natural agricultural waste feedstocks such as meat and poultry by-products, animal wastes, grocery scraps, restaurant grease, and bakery wastes.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Fertilizers Made From Recovered Organic Materials.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased fertilizers, USDA identified 15 different manufacturers producing 30 individual biobased products. These 15 manufacturers do not necessarily include all manufacturers of biobased fertilizers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Organic Materials Review Institute, listed seal assures the stability of a product for certified organic production, handling, and processing; and
- United States Composting Council Seal of Testing Assurance.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure contract services to perform, activities such as landscape maintenance and the production of agricultural products that require the use of fertilizers. Thus, they have a need for fertilizers and for services that require the use of fertilizers. Designation of fertilizers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased fertilizers was performed for two of the products using the BEES analytical tool. Table 7 summarizes the BEES results for the two fertilizers. As seen in Table 7, the environmental performance score, which includes human health, ranges from 0.3299 to 0.9576 points per the quantity of fertilizer recommended for 1 acre over 3 years of use. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to the quantity of fertilizer recommended for 1 acre over 3 years of use, expressed in 100ths of 1 percent.

TABLE 7.—SUMMARY OF BEES RESULTS FOR FERTILIZERS

Parameters	Fertilizers	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.3299	0.9576
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0020	0.0039
Ecological Toxicity (11%)	0.0212	0.1754
Eutrophication (5%)	0.0061	0.0407
Fossil Fuel Depletion (5%)	0.1455	0.1203
Global Warming (16%)	0.0493	0.4941
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0809	0.0753
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0249	0.0221
Water Intake (3%)	0.0000	0.0258
Economic Performance (Life Cycle Costs ($)) [2]	17.64	195.43
First Cost	17.64	132.00
Future Cost (3.9%)	0.00	63.43
Functional Unit	(3)	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] The quantity of fertilizer recommended for 1 acre over 3 years of use.

The life cycle cost of the submitted fertilizers range from $17.64 to $195.43 (present value dollars) for the quantity of fertilizer recommended for 1 acre over 3 years of use.

8. Metalworking Fluids

Metalworking fluids represent that group of products formulated to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during operations such as grinding and machining. These products are designed for continuous use in systems that re-circulate the fluid through the use of a reservoir. These products are typically formulated from vegetable seed oils and are sold as concentrates designed to be diluted with water or other solvents prior to application.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased metalworking fluids, USDA identified 16 different manufacturers producing 45 individual

biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased metalworking fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards and other relevant measurements of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D3233–93 (2003), Standard Test Methods for Measurement of Extreme Pressure Properties of Fluid Lubricants (Falex Pin and Vee Block Methods);
- ASTM D3946–92 (1997), Standard Test Method for Evaluating the Bacteria Resistance of Water-Dilutable Metalworking Fluids (Withdrawn 2004); and
- Readily Biodegradable EPA 560/6–82–003, monitors the conversion of the test material carbon to carbon dioxide, the product must biodegrade in 28 days to pass.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely own and operate fabrication and repair facilities that utilize the types of metal machining equipment that require the use of metalworking fluids. In addition, many Federal agencies contract for services involving the use of such facilities and equipment. Thus, they have a need for metalworking fluids and for services that require the use of metalworking fluids. Designation of metalworking fluids will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased metalworking fluids was performed for two of the products using the BEES analytical tool. Table 8 summarizes the BEES results for the two biobased metalworking fluids. As seen in Table 8, the environmental performance score, which includes human health, ranges from 0.0018 to 0.0036 points per gallon of diluted and ready to use fluid. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one diluted and ready to use gallon of fluid, expressed in 100ths of 1 percent.

TABLE 8.—SUMMARY OF BEES RESULTS FOR METALWORKING FLUIDS

Parameters	Metalworking fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0018	0.0036
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0000	0.0000
Ecological Toxicity (11%)	0.0004	0.0026
Eutrophication (5%)	0.0001	0.0001
Fossil Fuel Depletion (5%)	0.0008	0.0002
Global Warming (16%)	0.0002	0.0002
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0002	0.0001
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0001	0.0000
Water Intake (3%)	0.0000	0.0004
Economic Performance (Life Cycle Costs ($)) [2]	0.72	0.96
First Cost	0.72	0.96
Future Cost (3.9%)	([3])	([3])
Functional Unit	One diluted and ready to use gallon of fluid.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted metalworking fluids range from $0.72 to $0.96 (present value dollars) per gallon of diluted and ready to use fluid.

9. Sorbents

Sorbents represent that group of materials formulated for clean up and bioremediation of oil and chemical spills, disposal of liquid materials, and prevention of leakage or leaching in maintenance applications, shop floors, and fuel storage areas. Products in this item are normally light in weight, produce little dust, and provide absorbing capabilities through wicking or sponge-like action. Biobased sorbents are typically produced from corncobs, cotton fibers, nut pith and other plant fiber, often combined with gelling agents.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Miscellaneous—Sorbents.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased sorbents, USDA identified 16 different manufacturers producing 31 individual biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased sorbents, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products has been tested against one or more industry performance standards and is being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified

by manufacturers of products within this item, include:

- ASTM D726–94 (2003), Standard Test Method for Resistance of Nonporous Paper to Passage of Air;
- ASTM D2974–00, Standard Test Methods for Moisture, Ash, and Organic Matter of Peat and Other Organic Soils; and
- Canadian General Standards Board CAN/CGSB–183.94, Method for Testing Sorbents.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, or procure services that perform, the types of clean-up and containment activities that would utilize sorbents. Thus, they have a need for sorbents and for services that require the use of sorbents. Designation of sorbents will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of sorbents was performed for two of the products using the BEES analytical tool. Table 9 summarizes the BEES results for the two sorbents. As seen in Table 9, the environmental performance score, which includes human health, ranges from 0.0957 to 0.1159 points per the quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to the quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil, expressed in 100ths of 1 percent.

TABLE 9.—SUMMARY OF BEES RESULTS FOR SORBENTS

Parameters	Sorbents	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0957	0.1159
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0001	0.0014
Ecological Toxicity (11%)	0.0006	0.0113
Eutrophication (5%)	0.0040	0.0018
Fossil Fuel Depletion (5%)	0.0059	0.0583
Global Warming (16%)	0.0026	0.0156
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0020	0.0221
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0024	0.0033
Water Intake (3%)	0.0781	0.0021
Economic Performance (Life Cycle Costs ($)) [2]	49.94	11.83
First Cost	49.94	11.83
Future Cost (3.9%)	(3)	(3)
Functional Unit	(4)	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.
[4] The quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil.

The life cycle cost of the submitted sorbents range from $11.83 to $49.94 (present value dollars) per the quantity of the analyzed sorbent required to absorb 1 barrel of light crude oil.

10. Graffiti and Grease Removers

Graffiti and grease removers represent that group of industrial solvent products formulated to remove automotive, industrial, and kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces. Biobased grease and graffiti removers are typically formulated from natural soy, corn, or citrus-based feedstocks and contain little to no hazardous ingredients.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased graffiti and grease removers, USDA identified 26 different manufacturers producing 44 individual biobased products. These 26 manufacturers do not necessarily include all manufacturers of biobased graffiti and grease removers, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that each of these products is being used commercially. While applicable performance standards and other measures of performance may exist, relevant measures of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Graffiti Performance Testing; and
- Adhesive Testing in Screen-printing.

USDA attempted to gather data on the potential market for biobased products within the Federal government as described in the section on adhesive and mastic removers. These attempts were largely unsuccessful. However, Federal agencies routinely perform, and procure services that perform, the types of clean-up activities that would utilize graffiti and grease removers. Thus, they have a need for graffiti and grease removers and for services that require the use of graffiti and grease removers. Designation of graffiti and grease removers will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased graffiti and grease removers was performed for two of the products using the BEES analytical tool. Table 10 summarizes the BEES results for the two graffiti and grease removers. As seen in Table 10, the environmental performance score, which includes human health, ranges from 0.0446 to 0.0646 points per gallon of the graffiti and grease removers. The environmental performance score indicates the share of

annual per capita U.S. environmental impacts that is attributable to one gallon of the graffiti and grease removers, expressed in 100ths of 1 percent.

TABLE 10.—SUMMARY OF BEES RESULTS FOR GRAFFITI AND GREASE REMOVERS

Parameters	Graffiti and grease removers	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0446	0.0646
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0003	0.0007
Ecological Toxicity (11%)	0.0039	0.0172
Eutrophication (5%)	0.0012	0.0112
Fossil Fuel Depletion (5%)	0.0268	0.0168
Global Warming (16%)	0.0043	0.0064
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0045	0.0089
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0032	0.0021
Water Intake (3%)	0.0004	0.0013
Economic Performance (Life Cycle Costs ($)) [2]	22.16	22.00
First Cost	22.16	22.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1 gallon.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted graffiti and grease removers range from $22.00 to $22.16 (present value dollars) per gallon of graffiti and grease removers.

C. Minimum Biobased Contents

Section 9002(e)(1)(C) directs USDA to recommend minimum biobased content levels where appropriate. In today's proposed rulemaking, USDA is proposing minimum biobased product content for each of the 10 items proposed for designation based on information currently available to USDA.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these 10 items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis. It is the responsibility of the manufacturers to ''self-certify'' that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. As contained in the Guidelines, USDA will consider qualifying feedstocks for biobased products originating in ''designated countries'' (as that term is defined in the Federal Acquisition Regulation (FAR) 25.003)) as well as from the United States. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and may take further actions as deemed appropriate.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level 3 percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimus biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002. Procuring agencies are encouraged to seek products with the highest biobased content that is practicable in all 10 of the proposed designated items.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated item.

1. Adhesive and Mastic Removers

Five of the 13 biobased adhesive and mastic removers identified have been tested for biobased content using ASTM D6866.[1] The biobased content of these 5 samples ranged from 61 percent to 99 percent.

USDA is proposing to set the minimum biobased content for this item at 58 percent, based on the product with

[1] ASTM D6866 (Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis) is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

a biobased content of 61 percent. No industry standard performance tests have been identified for this item. Thus, although all products within this item perform essentially the same function, the performance of any individual product or the range of adhesive and mastic formulations that exist is unknown. Because USDA does not have performance information to determine whether the products with biobased contents on the lower end of the range have unique or more desirable characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

2. Insulating Foam for Wall Construction

Two of the 21 identified biobased insulating foam for wall construction products have been tested for biobased content using ASTM D6866. The biobased content of these two products were 11 and 65 percent.

USDA is proposing to set a minimum biobased content of 8 percent for this item, based on the product with a biobased content of 11 percent. The two products sampled provide insulating foam in two different manners. One is a ''spray in place'' foam and the other is a foam board. USDA believes that both products should be included in the preferred procurement program and, therefore, is proposing to set the minimum biobased content at a level that will include both of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. USDA also believes that setting a minimum biobased content of 8 percent for this item is reasonable given that only two samples were tested, and that the alternative of basing the minimum biobased content on the 65 percent product could result in unforeseen limitations to the use of ''spray in place'' insulating foam. Lastly, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

3. Hand Cleaners and Sanitizers

Sixteen of the 73 biobased hand cleaners and sanitizers identified have been tested for biobased content using ASTM D6866. The biobased content of these 16 hand cleaners and sanitizers ranged from 21 percent to 95 percent.

USDA is proposing to set the minimum biobased content for this item at 18 percent, based on the product with a biobased content of 21 percent. Hand cleaners and sanitizers are formulated to meet a wide range of demands. Some are designed specifically to be used without water, while others are to be used with water; some are liquids and others are gels; some contain pumice, while others may contain moisturizers; and some are intended for use in health care facilities, while others are formulated to remove grease or similar substances. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

4. Composite Panels

Eight of the 51 biobased composite panels identified have been tested for biobased content using ASTM D6866. The biobased content of these 8 composite panels ranged from 29 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 26 percent, based on the product with a biobased content of 29 percent. Composite panels are manufactured to meet a range of demands and may be formulated to meet specific applications. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

5. Fluid-Filled Transformers

Two of the 12 identified biobased fluids designed for use in fluid-filled transformers have been tested for biobased content using ASTM D6866. The biobased content of these two biobased fluids were 69 percent and 98 percent.

USDA is proposing to set the minimum biobased content for this item at 66 percent, based on the product with a biobased content of 69 percent. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. USDA also believes that setting a minimum biobased content of 66 percent for this item is reasonable given that only two samples were tested, and that the alternative of basing the minimum biobased content on the 98 percent product could result in unforeseen limitations to the use of biobased fluid-filled transformers. Lastly, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

6. Biodegradable Containers

Two of the six available biobased biodegradable containers have been tested for biobased content using ASTM D6866. The biobased content of these two biodegradable container were 99 percent and 100 percent.

USDA is proposing to set the minimum biobased content for this item at 96 percent, based on the product with a biobased content of 99 percent. USDA believes that the slight difference between the biobased content of two products tested is insignificant, and establishing the minimum biobased content for the item based on the lower tested value offers procurement agents more choice in selecting products to purchase.

7. Fertilizers

Ten of the 30 biobased fertilizers identified have been tested for biobased content using ASTM D6866. The biobased content of these 10 biobased fertilizers ranged from 74 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 71 percent, based on the product with a biobased content of 74 percent. Fertilizers are designed to address a range of parameters, including, application method, nutrients contents, release rate of nutrients, soil types, crop types, and desired re-application intervals. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

8. Metalworking Fluids

Seventeen of the 45 biobased metalworking fluids identified have been tested for biobased content using ASTM D6866. The biobased content of these 17 biobased metalworking fluids ranged from 43 percent to 100 percent. Because biobased metalworking fluids are typically sold as concentrates to be diluted with either water or petroleum-based solvents before use, the biobased content of the fluids must be determined before dilution.

USDA is proposing to set the minimum biobased content for this item at 40 percent, based on the product with a biobased content of 43 percent. The conditions under which metalworking fluids must perform are widely varied. Different types of machining operations and different metal feedstocks require different characteristics in the associated metalworking fluids. In some operations the ability to dissipate heat may be the most critical characteristic, while in others corrosion prevention may be most important. The ability of a metalworking fluid to be diluted with water is desirable in many situations, but may not be significant in others. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

9. Sorbents

Seven of the 31 biobased sorbents identified have been tested for biobased content using ASTM D6866. The biobased content of these seven biobased sorbents ranged from 55 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 52 percent, based on the product with a biobased content of 55 percent. Sorbents are used to absorb a variety of liquid materials and the sorbent formulation affects the absorbency of the sorbent. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

10. Graffiti and Grease Removers

Eleven of the 44 biobased graffiti and grease removers identified have been tested for biobased content using ASTM D6866. The biobased content of these 11 biobased graffiti and grease removers ranged from 24 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 21 percent, based on the product with a biobased content of 24 percent. Graffiti and grease removers are formulated to remove a wide variety of paints and other marking materials, as well as grease, from many types of surfaces and using several different application techniques. For example, some graffiti and grease removers are sold as concentrates to be mixed with water, while others are designed to be used as purchased; some are designed to be sprayed on with power washers, while others are designed to be applied with brushes; and some are designed to provide a foaming action, while others are not. Because of this range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

D. Effective Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, under the terms of the proposed rule, procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA proposes a one-year period before the procurement preferences would take effect based on an understanding that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section

9002(d) of FSRIA and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these items are promulgated for designation, Federal agencies will have had a minimum of 18 months (from when these designated items were proposed), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated items.

V. Where Can Agencies Get More Information on These USDA-Designated Items?

Once the item designations in today's proposal become final, manufacturers and vendors voluntarily may post information on specific products, including product and contact information, on the USDA biobased products Web site *http://www.biobased.oce.usda.gov*. USDA will periodically audit the information displayed on the Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products.''

USDA has linked its Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To access this list, go to USDA's FB4P Web site and click on the ''Product Submission'' tab and look for the DoD Specifications link.

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order 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 this Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866. The annual economic effect associated with today's proposed rule has not been quantified because the information necessary to estimate the effect does not exist. As was discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage of the 10 items proposed for designation. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would necessitate estimating the anticipated market penetration of biobased products, which would entail many assumptions and, thus, be of questionable value. Also, the program allows procuring agencies the option of not purchasing biobased products if the costs are deemed ''unreasonable.'' Under this program, the determination of ''unreasonable'' costs will be made by individual agencies. USDA knows these agencies will consider such factors as price, life-cycle costs, and environmental benefits in determining whether the cost of a biobased product is determined to be ''reasonable'' or ''unreasonable.'' However, until the program is actually implemented by the various agencies, it is impossible to quantify the impact this option would have on the economic effect of the rule. Therefore, USDA relied on a qualitative assessment to reach the judgment that the annual economic effect of the designation of these 10 items is less than $100 million, and likely to be substantially less than $100 million. This judgment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased) and, secondarily, on the ability of procuring agencies not to purchase these items if costs are judged unreasonable, which would reduce the economic effect.

1. Summary of Impacts

Today's proposed rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses to begin supplying biobased materials to manufacturers of adhesive and mastic removers, insulating foam for wall construction, hand cleaners and sanitizers, composite panels, fluid-filled transformers, biodegradable containers, fertilizers, metalworking fluids, sorbents, and graffiti and grease removers and to begin supplying these products made with biobased materials to Federal agencies and their contractors. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for these biobased materials and products. However, other businesses that manufacture and supply only non-qualifying products and do not offer a biobased alternative product may experience a decrease in demand for their products. Thus, today's proposed

rule will likely increase the demand for biobased products, while decreasing the demand for non-qualifying products. It is anticipated that this will create a largely ''offsetting'' economic impact.

USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. If a business currently supplies any of the items proposed for designation to a procuring agency and those products do not qualify as biobased products, the proposed rule may reduce that company's ability to compete for future contracts. However, the proposed rule will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, many businesses, including small businesses, that market to Federal agencies and their contractors have the option of modifying their product lines to meet the new biobased specifications.

2. Summary of Benefits

The designation of these 10 items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for biobased products and, thus, for the many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas. The increased demand for biobased products will also lead to the substitution of products with a possibly more benign or beneficial environmental impact, as compared to the use of non-biobased products. By purchasing these biobased products, procuring agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these 10 items. However, because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of today's proposed rule. USDA, however, anticipates the annual economic effect of the designation of these 10 items to be substantially below the $100 million threshold. In addition, today's proposed rule does not do any of the following: Create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these 10 items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Biobased Products Preferred Procurement Program in section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. Today's proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of today's proposed rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the 10 items proposed for designation by today's proposed rulemaking, the number is expected to be small. Because biobased products represent an emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by today's proposed rulemaking is not expected to be substantial.

After considering the economic impacts of today's proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order

12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each item designated. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Add §§ 2902.16 through 2902.25 to subpart B to read as follows:

Subpart B—Designated Items

* * * * *

Sec.

2902.16 Adhesive and Mastic Removers.
2902.17 Insulating Foam for Wall Construction.
2902.18 Hand Cleaners and Sanitizers.
2902.19 Composite Panels.
2902.20 Fluid-filled Transformers.
2902.21 Biodegradable Containers.
2902.22 Fertilizers.
2902.23 Metalworking Fluids.
2902.24 Sorbents.
2902.25 Graffiti and Grease Removers.

Subpart B—Designated Items

* * * * *

§ 2902.16 Adhesive and Mastic Removers.

(a) *Definition*. Industrial cleaning solvent products formulated for use in removing asbestos, carpet, and ceramic tile mastics as well as adhesive materials, including glue, tape, and gum, from various surface types.

(b) *Minimum biobased content*. The minimum biobased content is 58 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesive and mastic removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased adhesive and mastic removers.

(d) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.17 Insulating Foam for Wall Construction.

(a) *Definition*. Products designed to provide a sealed thermal barrier for residential or commercial construction applications.

(b) *Minimum biobased content*. The minimum biobased content is 8 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased insulating foam for wall construction. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased insulating foam for wall construction.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Building Insulation. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated building insulation and which product should be afforded the preference in purchasing.

(e) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the

preferred procurement requirement for this item.

§ 2902.18 Hand Cleaners and Sanitizers.

(a) *Definition*. Personal care products formulated for use in removing a variety of different soils, greases, and bacteria from human hands with or without the use of water.

(b) *Minimum biobased content*. The minimum biobased content is 18 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hand cleaners and sanitizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hand cleaners and sanitizers.

(d) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.19 Composite Panels.

(a) *Definition*. Engineered products designed for use in non-structural construction applications, including wall panels, shelving, decorative panels, lavatory dividers, and exterior signs.

(b) *Minimum biobased content*. The minimum biobased content is 26 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased composite panels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased composite panels.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content products: Laminated Paperboard and Structural Foam Board; Shower and Restroom Dividers; and Signage. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated laminated paperboard, structural foam board, shower and restroom dividers, and signage, and which product should be afforded the preference in purchasing.

(e) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.20 Fluid-filled Transformers.

(a) *Definition*. Electric power transformers that are designed to utilize a dielectric (non-conducting) fluid to provide insulating and cooling properties.

(b) *Minimum biobased content*. The minimum biobased content is 66 percent and shall be based on the amount of qualifying biobased carbon in the dielectric fluid within the fluid-filled transformer as a percent of the weight (mass) of the total organic carbon in the fluid.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fluid-filled transformers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased fluid-filled transformers.

(d) *Exemptions*. The following applications are exempt from the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.21 Biodegradable Containers.

(a) *Definition*. Products capable of complying with the specifications established in the biodegradability standard ASTM D6400 ''Standard Specifications for Compostable Plastics'' and designed to be used for temporary storage or transportation of materials such as food items.

(b) *Minimum biobased content*. The minimum biobased content is 96 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased biodegradable containers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased biodegradable containers.

(d) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.22 Fertilizers.

(a) *Definition*. Products formulated or processed to provide nutrients for plant growth and/or beneficial bacteria to convert nutrients into plant usable forms.

(b) *Minimum biobased content*. The minimum biobased content is 71 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fertilizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased fertilizers.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Fertilizers Made From Recovered Organic Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist

Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated fertilizers and which product should be afforded the preference in purchasing.

(e) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.23 Metalworking Fluids.

(a) *Definition*. Products formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during operations such as grinding and machining.

(b) *Minimum biobased content*. The minimum biobased content is 40 percent and shall be based on the amount of qualifying biobased carbon in the undiluted product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the fluid must be determined before dilution.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids.

(d) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.24 Sorbents.

(a) *Definition*. Materials formulated for use in the clean up and bioremediation of oil and chemical spills, the disposal of liquid materials, or the prevention of leakage or leaching in maintenance applications, shop floors, and fuel storage areas.

(b) *Minimum biobased content*. The minimum biobased content is 52 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sorbents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased sorbents.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Sorbents. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated sorbents and which product should be afforded the preference in purchasing.

(e) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.25 Graffiti and Grease Removers.

(a) *Definition*. Industrial solvent products formulated to remove automotive, industrial, or kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces.

(b) *Minimum biobased content*. The minimum biobased content is 21 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the remover must be determined before dilution.

(c) *Preference effective date*. No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying graffiti and grease removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased graffiti and grease removers.

(d) *Exemptions*. Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

Dated: August 10, 2006.

Keith Collins,

Chief Economist, U.S. Department of Agriculture.

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August 17, 2006

Part III

Department of Agriculture

Office of Energy Policy and New Uses

7 CFR Part 2902

Designation of Biobased Items for Federal Procurement; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA31

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to add 10 sections to designate the following 10 items within which biobased products would be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002: 2-Cycle engine oils; lip care products; biodegradable films; stationary equipment hydraulic fluids; biodegradable cutlery; glass cleaners; greases; dust suppressants; carpets; and carpet and upholstery cleaners. USDA also is proposing minimum biobased content for each of these items. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or the functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

DATES: USDA will accept public comments on this proposed rule until October 16, 2006.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA31. Also, please identify submittals as pertaining to the ''Proposed Designation of Items.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: fb4p@oce.usda.gov.* Include RIN number 0503–AA31 and ''Proposed Designation of Items'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815.
- Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 401–4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov*; phone (202) 401–0461. Information regarding the Federal Biobased Products Preferred Procurement Program is available on the Internet at *http://www.biobased.oce.usda.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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I. Authority

The designation of these items is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

Section 9002 of FSRIA, as amended by section 943 of the Energy Policy Act of 2005, Public Law 109–58 (Energy Policy Act), provides for the preferred procurement of biobased products by procuring agencies. Section 943 of the Energy Policy Act amended the definitions section of FSRIA, 7 U.S.C. 8101, by adding a definition of ''procuring agency'' that includes both Federal agencies and ''any person contracting with any Federal agency with respect to work performed under that contract.'' The amendment also made Federal contractors, as well as Federal agencies, expressly subject to the procurement preference provisions of section 9002 of FSRIA. However, because this program requires agencies to incorporate the preference for biobased products into procurement specifications, the statutory amendment makes no substantive change to the program. USDA amended the Guidelines to incorporate the new definition of ''procuring agency'' through an interim final rule.

Procuring agencies must procure biobased products within each designated item unless they determine that products within a designated item are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the preferred procurement program. In implementing the preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule. Rather, the effect of the designation of the items is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that fall under the designated items that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002 also requires USDA to provide information to procuring agencies on the availability, relative price, performance, and environmental and public health benefits of such items

and, under section 9002(e)(1)(C), to recommend where appropriate the minimum level of biobased content to be contained in the procured products.

Overlap with EPA Comprehensive Procurement Guidelines program for recovered content products. Some of the biobased items designated for preferred procurement may overlap with products designated under the Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines program for recovered content products. Where that occurs, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product. In situations where USDA believes there may be an overlap, it plans to ask manufacturers of qualifying biobased products to provide additional product and performance information including the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers may also be asked to provide other types of information, such as whether the product contains petroleum-, coal-, or natural gas-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and human health measures and life cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM International (ASTM) Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will assist Federal agencies in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products and will be available on USDA's Web site with its catalog of qualifying biobased products.

Where a biobased item is used for the same purposes and to meet the same requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, that biobased hydraulic fluid is to be used to address certain environmental or health requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

Federal Government Purchase of ''Green'' Products. Three components of the Federal government's green purchasing program are the Biobased Products Preferred Purchasing Program, the Environmental Protection Agency's Comprehensive Procurement Guidelines for products containing recovered materials, and the Environmentally Preferable Products Program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

In the case of cleaning products, procuring agencies should note that not all biobased products are ''environmentally preferable.'' Unless the cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that products have been reformulated in accordance with recommendations from the U.S. EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkylphenol ethoxylates, ethylene glycol, and volatile organic compounds. In addition, both require that cleaning products have neutral or less caustic pH.

On the other hand, some biobased products may be better for the environment than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with the EPA's DfE program. To fully compare products, one must look at the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their ''cradle-to-grave'' impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Qualifying biobased products offer the user the opportunity to manage the carbon cycle and limit the introduction of new fossil carbon into the atmosphere, whereas non-biobased products derived from fossil fuels add new fossil carbon to the atmosphere.

Manufacturers of qualifying biobased products under the Federal Biobased Products Preferred Procurement Program (FB4P) will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the BEES analysis, which examines 11 different environmental parameters, including human health, or the comparable ASTM D7505. Therefore, USDA encourages Federal procurement agencies to examine all available information on the environmental and human health effects of cleaning products when making their purchasing decisions.

Green Building Council. More than a dozen Federal agencies use the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating Systems for new construction, building renovation, and building operation and maintenance. The systems provide criteria for implementing sustainable design principles in building design, construction, operation, and maintenance. Points are assigned to each criterion, and building projects can be certified as ''certified,'' ''silver,'' ''gold,'' or ''platinum,'' depending on the number of points for which the project qualifies. LEED for New Construction and Major Renovations (LEED-NC) includes a ''Materials & Resources'' criterion, with one point allocated for the use of rapidly renewable materials. Thus, the use of biobased construction products can help agencies obtain LEED certification for their building construction projects.

Interagency Council. USDA has created, and is chairing, an ''interagency council,'' with membership selected from among Federal stakeholders to the FB4P. To augment its own research, USDA consults with this council in identifying the order of item designation, manufacturers producing and marketing products that fall within an item proposed for designation, performance standards used by Federal agencies evaluating products to be procured, and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

III. Summary of Today's Proposed Rulemaking

Today, USDA is proposing to designate the following 10 items for

preferred procurement: 2-Cycle engine oils; lip care products; biodegradable films; stationary equipment hydraulic fluids; biodegradable cutlery; glass cleaners; greases; dust suppressants; carpets; and carpet and upholstery cleaners. USDA is also proposing minimum biobased content for each of these items (see Section IV.C). Lastly, USDA is proposing a date by which Federal agencies must incorporate designated items into their procurement specifications (see Section IV.D).

In today's proposed rulemaking, USDA is providing information on its findings as to the availability, economic and technical feasibility, environmental and public health benefits, and life cycle costs for each of the 10 designated items. Information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these 10 items is not presented in this notice. Further, USDA has reached an agreement with manufacturers not to publish their names in the **Federal Register** when designating items. This agreement was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, USDA will encourage the manufacturers of products within the designated item to voluntarily post their names and other contact information on the USDA FB4P Web site.

Warranties. Some of the items being proposed for designation today may affect maintenance warranties. As time and resources allow, USDA will work with manufacturers on addressing any effect the use of biobased products may have on maintenance warranties. At this time, however, USDA does not have information available as to whether or not the manufacturers will state that the use of these products will void maintenance warranties. USDA encourages manufacturers of biobased products to work with original equipment manufacturers (OEMs) to ensure that biobased products will not void maintenance warranties when used. USDA is willing to assist manufacturers of the biobased products, if they find that existing performance standards for maintenance warranties are not relevant or appropriate for biobased products, in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. If despite these efforts there is insufficient information regarding the use of a biobased product and its effect on maintenance warranties, USDA notes that the procurement agent would not be required to buy such a product. As information is available on warranties, USDA will make such information available on its FB4P Web site.

Additional Information. USDA is working with manufacturers and vendors to post all relevant product and manufacturer contact information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred program more efficient. Steps USDA has implemented, or will implement, include: Making direct contact with submitting companies through e-mail and phone conversations to encourage completion of product listing; coordinating outreach efforts with intermediate material producers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these items through the following Web site: *http://www.biobased.oce.usda.gov.*

Comments. USDA invites comment on the proposed designation of these 10 items, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during the selection of these items. In addition, USDA invites comments and information in the following areas:

1. Two of the items being proposed for designation (stationary equipment hydraulic fluids and carpets) may overlap with products designated under EPA's Comprehensive Procurement Guidelines for products containing recovered material. To help procuring agencies in making their purchasing decisions between biobased products within the proposed designated items that overlap with products containing recovered material, USDA is requesting from manufacturers and users product specific information on unique performance attributes, environmental and human health effects, disposal costs, and other attributes that would distinguish biobased products from products containing recovered material as well as non-biobased products. USDA will post this information on the FB4P Web site.

2. Biobased carpet can be composed of a biobased face or a biobased backing or both (i.e., both the face and backing are biobased). USDA is proposing in today's notice that the minimum biobased content for carpet be based on the total product; that is, on both the carpet's face and backing. USDA is seeking comment on whether separate minimum biobased contents should be set for the face and for the backing. Please provide detailed rationale and information to support your comments.

3. USDA is proposing to designate dust suppressants as an item for preferred procurement. The products intended to be covered are those designed for use in outdoor environments. However, the same products, or products with very similar formulations, may also be used in indoor environments, such as indoor arenas, that simulate outdoor conditions. For example, an indoor arena might provide parking on a dirt floor, such as would be found in outside parking. USDA is proposing that dust suppressant products used for similar situations that take place within an indoor environment be included in this item. USDA is interested in your comments on whether this item should be strictly limited to outdoor environments. Please be sure to provide your rationale for your comments.

4. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed items. If you know of other such standards or relevant measures of performance for the proposed items, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used. For example, in today's proposed rulemaking, a Green Seal standard (GS–37) has been identified for glass cleaners. USDA is interested in learning if other equivalent standards for glass cleaners exist and where they are being used.

5. As proposed, biodegradable films do not include films used for agricultural purposes (such as films that would be used to cover fields) and durable films. Durable films will be proposed as a separate item for preferred procurement. USDA, however, is interested in receiving comment on whether there should be any subcategories within biodegradable films (including any biodegradable films that might be considered agricultural films) and what they might be. Please be sure to provide rationale and supporting information with your comments.

6. Many biobased products within the items being proposed for designation will have positive environmental and human health attributes. USDA is seeking comments on such attributes in order to provide additional information on the FB4P Web site. This information will then be available to Federal procuring agencies and will assist them in making ''best value'' purchase decisions. When possible, please provide appropriate documentation to support the environmental and human health attributes you describe.

To assist you in developing your comments, the background information used in proposing these items for designation can be found on the FB4P Web site. All comments should be submitted as directed in the **ADDRESSES** section above.

IV. Designation of Items, Minimum Biobased Contents, and Time Frame

A. Background

In order to designate items (generic groupings of specific products such as crankcase oils or products that contain qualifying biobased fibers) for preferred procurement, section 9002 requires USDA to consider: (1) The availability of items; and (2) the economic and technological feasibility of using the items, including the life cycle costs of the items.

In considering an item's availability, USDA uses several sources of information. USDA performs Internet searches, contacts trade associations (such as the Biobased Manufacturers Association) and commodity groups, searches the Thomas Register (a database, used as a resource for finding companies and products manufactured in North America, containing over 173,000 entries), and contacts individual manufacturers and vendors to identify those manufacturers and vendors with biobased products within items being considered for designation. USDA uses the results of these same searches to determine if an item is generally available.

In considering an item's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of an item and its cost and performance characteristics. This information is obtained from the sources used to assess an item's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of an item being purchased by a procuring agency or other entity, where available. In sum, USDA considers an item economically and technologically feasible for purposes of designation if products within that item are being offered and used in the marketplace.

In considering the life cycle costs of items proposed for designation, USDA uses the BEES analytical tool to test individual products within each proposed item. (Detailed information on this analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html*.) The BEES analytical tool measures the environmental performance and the economic performance of a product.

Environmental performance is measured in the BEES analytical tool using the internationally-standardized and science-based life cycle assessment approach specified in the International Organization for Standardization (ISO) 14000 standards. The BEES environmental performance analysis includes human health as one of its components. All stages in the life of a product are analyzed: Raw material production; manufacture; transportation; installation; use; and recycling and waste management. The time period over which environmental performance is measured begins with raw material production and ends with disposal (waste management). The BEES environmental performance analysis also addresses products made from biobased feedstocks.

Economic performance in the BEES analysis is measured using the ASTM standard life cycle cost method (ASTM E917), which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal. The time frame for economic performance extends from the purchase of the product to final disposal.

USDA then utilizes the BEES results of individual products within a designated item in its consideration of the life cycle costs at the item level. There is a single unit of comparison associated with each designated item. The basis for the unit of comparison is the ''functional unit,'' defined so that the products compared are true substitutes for one another. If significant differences have been identified in the useful lives of alternative products within a designated item (e.g., if one product lasts twice as long as another), the functional unit will include reference to a time dimension to account for the frequency of product replacement. The functional unit also will account for products used in different amounts for equivalent service. For example, one surface coating product may be environmentally and economically preferable to another on a pound-for-pound basis, but may require twice the mass to cover one square foot of surface, and last half as long, as the other product. To account for these performance differences, the functional unit for the surface coating item could be ''one square foot of application for 20 years'' instead of ''one pound of surface coating product.'' The functional unit provides the critical reference point to which all BEES results for products within an item are scaled. Because functional units vary from item to item, performance comparisons are valid only among products within a designated item.

The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at *http://www.biobased.oce.usda.gov*.

As discussed above, the BEES analysis includes information on the environmental performance, human health impacts, and economic performance. In addition, ASTM D7505, which manufacturers may use in lieu of the BEES analytical tool, provides similar information. USDA is working with manufacturers and vendors to post this information on the FB4P Web site before a procuring agency asks for it, in order to make the preferred procurement program more efficient. As discussed earlier, USDA has also implemented, or will implement, several other steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to post this information, including manufacturer contact information, on the FB4P Web site to make it available to procurement officials. Additional information on specific products within the items proposed for designation may also be obtained directly from the manufacturers of the products.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering from manufacturers of biobased products being considered for designation information on industry standard test methods that they are using to evaluate the functional performance of their products. Additional standards are also being identified during meetings of the Interagency Council and during the review process for each proposed rule. We have listed under the detailed discussion of each item proposed for designation (presented in Section IV.B) the functional performance test methods identified during the development of this **Federal Register** notice for these 10 items. While this process identifies

many of the relevant standards, USDA recognizes that the performance test methods identified herein do not represent all of the methods that may be applicable for a designated item or for any individual product within the designated item. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program becomes fully implemented, these and other additional relevant performance standards will be available on the FB4P Web site.

In gathering information relevant to the analyses discussed above, USDA has made extensive efforts to contact and request information and product samples from representatives of all known manufacturers of products within the items proposed for designation. However, because the submission of information is on a strictly voluntary basis, USDA was able to obtain information and samples only from those manufacturers who were willing voluntarily to invest the resources required to gather and submit the information and samples. USDA used the samples to test for biobased content and the information to conduct the BEES analyses. The data presented are all the data that were submitted in response to USDA requests for information from all known manufacturers of the products within the 10 items proposed for designation. While USDA would prefer to have complete data on the full range of products within each item, the data that were submitted are sufficient to support designation of the items in today's proposed rulemaking.

To propose an item for designation, USDA must have sufficient information on a sufficient number of products within an item to be able to assess its availability and its economic and technological feasibility, including its life cycle costs. For some items, there may be numerous products available. For other items, there may be very few products currently available. Given the infancy of the market for some items, it is not unexpected that even single-product items will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined that the identification of two or more biobased products within an item, or even a single product with two or more suppliers, is sufficient to consider the designation of that item. Similarly, the documented availability, benefits, and life cycle costs of even a very small percentage of all products that may exist within an item are also considered sufficient to support designation.

B. Items Proposed for Designation

USDA uses a model (as summarized below) to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the USDA biobased program Web site at *http://www.biobased.oce.usda.gov.*

In general, items are developed and prioritized for designation by evaluating them against program criteria established by USDA and by gathering information from other government agencies, private industry groups, and independent manufacturers. These evaluations begin by asking the following questions about the products within an item:

- Are they cost competitive with non-biobased products?
- Do they meet industry performance standards?
- Are they readily available on the commercial market?

In addition to these primary concerns, USDA then considers the following points:

- Are there manufacturers interested in providing the necessary test information on products within a particular item?
- Are there a number of manufacturers producing biobased products in this item?
- Are there products available in this item?
- What level of difficulty is expected when designating this item?
- Is there Federal demand for the product?
- Are Federal procurement personnel looking for biobased products?
- Will an item create a high demand for biobased feed stock?
- Does manufacturing of products within this item increase potential for rural development?

After completing this evaluation, USDA prioritizes the list of items for designation. USDA then gathers information on products within the highest priority items and, as sufficient information becomes available for groups of approximately 10 items, a new rulemaking package will be developed to designate the items within that group. The list of items may change, with items being added or dropped, and the order in which items are proposed for designation is likely to change because the information necessary to designate an item may take more time to obtain than an item lower on the list.

In today's proposed rulemaking, USDA is proposing to designate 10 items for the preferred procurement program: 2-Cycle engine oils; lip care products; biodegradable films; stationary equipment hydraulic fluids; biodegradable cutlery; glass cleaners; greases; dust suppressants; carpets; and carpet and upholstery cleaners. USDA has determined that each of these 10 items meets the necessary statutory requirements—namely, that they are being produced with biobased products and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, USDA has sufficient information on these 10 items to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility, including life cycle costs.

Mature Markets. Section 2902.5(c)(2) of the final guidelines states that USDA will not designate items for preferred procurement that are determined to have mature markets. Mature markets are described as items that had significant national market penetration in 1972. USDA contacted manufacturers, manufacturing associations, and industry researchers to determine if, in 1972, biobased products had a significant market share within any of the items proposed for designation today. USDA found that biobased products within none of the 10 items proposed for designation today had a significant market share in 1972 and that, generally, the companies that produce biobased products within these proposed designated items have been in business for only 10 to 20 years.

Overlap with EPA-Designated Recovered Content Products. In today's proposed rule, two of the 10 items may overlap with EPA-designated recovered content products. These two items are: stationary equipment hydraulic fluid and carpets. For these two items, USDA is requesting that certain information on the qualifying biobased products be made available by their manufacturers to assist Federal agencies in determining

if an overlap exists between the qualifying biobased product and the applicable EPA-designated recovered content product. As noted earlier in this preamble, USDA is requesting information on overlap situations to further help procuring agencies make informed decisions when faced with purchasing a recovered content material product or a biobased product. As this information is developed, USDA will make it available on the FB4P Web site.

Exemptions. When proposing items for preferred procurement under the FB4P, USDA will identify, on an item-by-item basis, items that would be exempt from preferred procurement on the basis of their use in products and systems designed or procured for combat or combat-related missions. USDA believes it is inappropriate to apply the biobased purchasing requirement to tactical equipment unless the Department of Defense has documented that these products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment needs. After evaluating these situations for each of the 10 items being proposed for designation, USDA is proposing to exempt 2-cycle engine oils, stationary hydraulic fluids, greases, and dust suppressants from preferred procurement under the FB4P when used in combat or combat-related missions.

USDA is proposing an exemption for all designated items when used in spacecraft systems and launch support equipment, because failure of such items could lead to catastrophic consequences. Many, if not all, items that USDA is or is planning to designate for preferred procurement are or will be used in space applications. Frequently, such applications used these items in ways that are different from their more ''conventional'' use on Earth. It is difficult, if not impossible, to forecast what situations may occur when these items are used in space and how they will perform. Therefore, USDA believes is it reasonable to limit the preferred procurement program to items used in more conventional applications and is proposing to exempt all designated items used in space applications from the FB4P.

For each item being proposed for exemption, the exemption does not extend to contractors performing work for DoD or NASA. For example, if a contractor is producing a part for use on the space shuttle, the metalworking fluid the contractor uses to produce the part should be biobased (provided it meets the specifications for metalworking). The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space applications. For example, if the part being produced by the contractor would actually be part of the space shuttle, then the exemption applies.

Each of the 10 proposed designated items are discussed in the following sections.

1. 2-Cycle Engine Oils

2-Cycle engine oils are lubricant products formulated to provide clean-burning lubrication, decreased spark plug fouling, reduced deposit formation, and reduced engine wear in 2-cycle gasoline engines (commonly found in lawn and garden equipment, small marine craft, and personal recreational vehicles such as motorcycles and snowmobiles). Biobased 2-cycle engine oils are typically formulated from natural soy, canola, or other seed-based oil feed stocks.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased 2-cycle engine oils, USDA identified 11 different manufacturers producing 17 individual biobased products. These 11 manufacturers do not necessarily include all manufacturers of biobased 2-cycle engine oils, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that many of these products have been tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D93–02a, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester;
- ASTM D2896–05 Standard Test Method for Base Number of Petroleum Products by Potentiometric Perchloric Acid Titration;
- ASTM D97–05, Standard Test Method for Pour Point of Petroleum Products;
- ASTM D2500–02e1, Standard Test Method for Cloud Point of Petroleum Products;
- ASTM D4682–87 (2002), Standard Specification for Miscibility with Gasoline and Fluidity of Two-Stroke-Cycle Gasoline Engine Lubricants;
- CEC–L–33–T82 is comparable to ASTM 5864 and tests for biodegradability;
- ASTM D2619, Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM D892, Standard Test Method for Foaming Characteristics of Lubricating Oils;
- ASTM D665, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water;
- ASTM D2270, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C; and
- International Organization for Standardization #ISO GD Surface chemical analysis—Glow discharge optical emission spectrometry (GD–OES).

USDA contacted procurement officials with various procuring agencies including the General Services Administration, several offices within the Defense Logistics Agency, the OFEE, USDA Departmental Administration, the National Park Service, EPA, Oak Ridge National Laboratory, and OMB in an effort to gather information on the purchases of 2-cycle engine oils and products within the other nine items proposed for designation today. Communications with these officials lead to the conclusion that obtaining credible current usage statistics and specific potential markets within the Federal government for biobased products within the 10 proposed designated items is not possible at this time. Most of the contacted officials reported that procurement data are reported in higher level groupings of materials and supplies than the proposed designated items. Also, the purchasing of such materials as part of contracted services and with individual purchase cards used to purchase products locally further obscures credible data on purchases of specific products.

USDA also investigated the Web site *http://www.fedbizopps.gov*, a site which lists Federal contract purchase opportunities greater than $25,000. The information provided on this Web site, however, is for broad categories of products rather than the specific types of products that are included in today's rulemaking. Therefore, USDA has been

unable to obtain data on the amount of 2-cycle engine oils purchased by procuring agencies. However, Federal agencies routinely perform, or procure contract services such as lawn maintenance services, that utilize small gas powered devices. Thus, they have a need for 2-cycle engine oils and for services that require the use of 2-cycle engine oils. Designation of 2-cycle engine oils will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased 2-cycle engine oils was performed for three of the products using the BEES analytical tool. Table 1 summarizes the BEES results for the three 2-cycle engine oils. As seen in Table 1, the environmental performance score, which includes human health, ranges from 0.0474 to 0.0661 points per gallon (mixed with fuel and ready to use). The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon (mixed with fuel and ready to use) of the product, expressed in 100ths of 1 percent. For example, the total amount of criteria air pollutants emitted in the U.S. in one year was divided by the total U.S. population to derive a ''criteria air pollutants per person value.'' The production and use of one gallon (mixed with fuel and ready to use) of 2-cycle engine oil sample A was estimated to contribute 0.000002 percent of this value.

TABLE 1.—SUMMARY OF BEES RESULTS FOR 2-CYCLE ENGINE OILS

Parameters	2-Cycle engine oils		
	Sample A	Sample B	Sample C
BEES Environmental Performance—Total Score [1]	0.0474	0.0485	0.0661
Acidification (5%)	0.0000	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0002	0.0008
Ecological Toxicity (11%)	0.0036	0.0036	0.0092
Eutrophication (5%)	0.0017	0.0018	0.0035
Fossil Fuel Depletion (5%)	0.0200	0.0204	0.0215
Global Warming (16%)	0.0060	0.0061	0.0080
Habitat Alteration (16%)	0.0000	0.0000	0.0000
Human Health (11%)	0.0080	0.0085	0.0103
Indoor Air (11%)	0.0000	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000	0.0000
Smog (6%)	0.0079	0.0078	0.0122
Water Intake (3%)	0.0000	0.0001	0.0006
Economic Performance (Life Cycle Costs ($)) [2]	2.70	2.95	4.84
First Cost	2.70	2.95	4.84
Future Cost (3.9%)	([3])	([3])	([3])
Functional Unit	1 gallon (mixed with fuel and ready to use)		

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

When evaluating the information presented in Table 1, as well as in the subsequent tables presented in this preamble, it should be noted that comparisons of the environmental performance scores are valid only among products within a designated item. Thus, comparisons of the scores presented in Table 1 and the scores presented in tables for other proposed designated items are not meaningful.

The numbers in parentheses following each of the 12 environmental impacts listed in the tables in this preamble indicate weighting factors. The weighting factors represent the relative importance of the 12 environmental impacts, including human health impacts, that contribute to the BEES Environmental Score. They are derived from lists of the relative importance of these impacts developed by the EPA Science Advisory Board for the purpose of advising EPA as to how best to allocate its limited resources among environmental impact areas. Note that a lower Environmental Performance score is better than a higher score.

Life cycle costs presented in the tables in this preamble are per the appropriate functional unit for the proposed designated item. Future costs are discounted to present value using the OMB discount rate of 3.9 percent.

The life cycle costs of the submitted 2-cycle engine oils range from $2.70 to $4.84 (present value dollars) per gallon (mixed with fuel and ready to use). Present value dollars presented in this preamble represent the sum of all costs associated with a product over a fixed period of time, including any applicable costs for purchase, installation, replacement, operation, maintenance and repair, and disposal. Present value dollars presented in this preamble reflect 2005 dollars. Dollars are expressed in present value terms to adjust for the effects of inflation. The complete results of the BEES analysis, extrapolated to the item level, for each item proposed for designation in today's proposed rulemaking can be found at *http://www.biobased.oce.usda.gov.*

2. Lip Care Products

Lip care products are personal care products formulated to replenish the moisture and/or prevent drying, thereby promoting better skin health of the lips. Biobased lip care products are typically formulated from natural soy or other seed-based oil feed stocks.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased lip care products, USDA identified 10 different manufacturers producing 28 individual biobased products. These 10 manufacturers do not necessarily include all manufacturers of biobased lip care products, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against an

industry standard and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

• United States Pharmacopeia (USP) Stability Test.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, various Federal agencies procure personal care products for use by their employees. Thus, they have a need for lip care products. Designation of lip care products will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased lip care products was performed for two of the products using the BEES analytical tool. Table 2 summarizes the BEES results for the two lip care products. As seen in Table 2, the environmental performance score, which includes human health, ranges from 0.1484 to 0.1778 points per case of lip balm (*i.e.*, 2,380 tubes). The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one case of the product, expressed in 100ths of 1 percent.

TABLE 2.—SUMMARY OF BEES RESULTS FOR LIP CARE PRODUCTS

Parameters	Lip care products	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.1484	0.1778
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0007	0.0010
Ecological Toxicity (11%)	0.0409	0.0447
Eutrophication (5%)	0.0157	0.0101
Fossil Fuel Depletion (5%)	0.0412	0.0533
Global Warming (16%)	0.0136	0.0182
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0128	0.0180
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0076	0.0105
Water Intake (3%)	0.0159	0.0220
Economic Performance (Life Cycle Costs($)) [2]	1,071	2,356
First Cost	1,071	2,356
Future Cost (3.9%)	([3])	([3])
Functional Unit	one case (2,380 tubes)	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle costs of the submitted lip care products range from $1,071 to $2,356 (present value dollars) per case of lip balm.

3. Biodegradable Films

Biodegradable films are used in packaging, wrappings, linings, and other similar applications and are capable of meeting ASTM D6400 standards for biodegradability. For the purpose of defining this designated item, biodegradable films do not include films used for agricultural purposes (such as films that would be used to cover fields) and durable films. Durable films will be proposed as a separate item for preferred procurement.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased biodegradable films, USDA identified 15 different manufacturers producing 45 individual products. These 15 manufacturers do not necessarily include all manufacturers of biobased biodegradable films, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

• ASTM D6400, Standard Specification for Compostable Plastics; and

• Deutsches Institut fur Normung, the German Institute for Standardization #DIN V 54900 Standard for testing the compostability of polymeric materials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely procure products, such as trash can liners, leaf collection bags, and packaging materials, that are made from biodegradable films. In addition, many Federal agencies contract for services involving the use of such products. Thus, they have a need for products made from biodegradable films and for services that use products made from biodegradable films. Designation of biodegradable films will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased biodegradable films was performed for two of the products using the BEES analytical tool. Table 3 summarizes the BEES results for the two biobased biodegradable films. As seen in Table 3, the environmental performance score, which includes human health, ranges from 0.0150 to 0.5682 points per kilogram of biodegradable film. The environmental performance score indicates the share of annual per capita U.S. environmental

impacts that is attributable to one kilogram of the product, expressed in 100ths of 1 percent.

TABLE 3.—SUMMARY OF BEES RESULTS FOR BIODEGRADABLE FILMS

Parameters	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.5682	0.0150
Acidification (5%)	0.0001	0.0000
Criteria Air Pollutants (6%)	0.0046	0.0001
Ecological Toxicity (11%)	0.0277	0.0006
Eutrophication (5%)	0.0330	0.0005
Fossil Fuel Depletion (5%)	0.2052	0.0084
Global Warming (16%)	0.0717	0.0020
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0893	0.0020
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.1365	0.0012
Water Intake (3%)	0.0001	0.0002
Economic Performance (Life Cycle Costs($)) [2]	6.60	8.17
First Cost	6.60	8.17
Future Cost (3.9%)	([3])	([3])
Functional Unit	one kilogram	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted biodegradable films was $6.60 to $8.17 (present value dollars) per kilogram of biodegradable film.

4. Stationary Equipment Hydraulic Fluids

Stationary equipment hydraulic fluids are hydraulic fluid products formulated for use in the hydraulic systems of stationary equipment. Products in this item act as a mechanical power transmission medium to replace mineral oils and to provide wear, rust, and oxidation protection for machine tools and equipment. Biobased stationary hydraulic fluids are typically formulated from natural soy, canola, or other seed oil-based feed stocks.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Re-refined lubricating oils.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased stationary equipment hydraulic fluids, USDA identified 20 different manufacturers producing 66 individual biobased products. These 20 manufacturers do not necessarily include all manufacturers of biobased stationary equipment hydraulic fluids, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that many of these products have been tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D1122–97a(2002), Standard Test Method for Density or Relative Density of Engine Coolant Concentrates and Engine Coolants By The Hydrometer;
- ASTM D1298–99e2, Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method;
- ASTM D130–04, Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D1401–02, Standard Test Method for Water Separability of Petroleum Oils and Synthetic Fluids;
- ASTM D1500–04a, Standard Test Method for ASTM Color of Petroleum Products (ASTM Color Scale);
- ASTM D2266–01, Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270–04, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C;
- ASTM D2272–02, Standard Test Method for Oxidation Stability of Steam Turbine Oils by Rotating Pressure Vessel;
- ASTM D2532–03, Standard Test Method for Viscosity and Viscosity Change After Standing at Low Temperature of Aircraft Turbine Lubricants;
- ASTM D2619–95(2002)e1, Standard Test Method for Hydrolytic Stability of Hydraulic Fluids (Beverage Bottle Method);
- ASTM D287–92(2000)e1, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method);
- ASTM D2983–04a, Standard Test Method for Low-Temperature Viscosity of Lubricants Measured by Brookfield Viscometer;
- ASTM D4052–96(2002)e1, Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter;
- ASTM D4172–94(2004), Standard Test Method for Wear Preventive Characteristics of Lubricating Fluid (Four-Ball Method);
- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D567–53(1955), Method for Calculating Viscosity Index (Withdrawn 1966);
- ASTM D5864–00, Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components; and
- ASTM D665–03, Standard Test Method for Rust-Preventing

Characteristics of Inhibited Mineral Oil in the Presence of Water.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely own and operate stationary equipment with hydraulic cylinders. In addition, many Federal agencies contract for services involving the use of such equipment. Thus, they have a need for stationary equipment hydraulic fluids and for services that require the use of stationary equipment hydraulic fluids. Designation of stationary equipment hydraulic fluids will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of stationary equipment hydraulic fluids was performed for two of the products using the BEES analytical tool. Table 4 summarizes the BEES results for the two stationary equipment hydraulic fluids. As seen in Table 4, the environmental performance score, which includes human health, ranges from 0.0042 to 0.0524 points per gallon of hydraulic fluid. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of hydraulic fluid, expressed in 100ths of 1 percent.

TABLE 4.—SUMMARY OF BEES RESULTS FOR STATIONARY EQUIPMENT HYDRAULIC FLUIDS

Parameters	Stationary equipment hydraulic fluids	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0042	0.0524
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0000	0.0002
Ecological Toxicity (11%)	0.0012	0.0093
Eutrophication (5%)	0.0002	0.0181
Fossil Fuel Depletion (5%)	0.0012	0.0063
Global Warming (16%)	0.0008	0.0054
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0004	0.0012
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0002	0.0045
Water Intake (3%)	0.0002	0.0074
Economic Performance (Life Cycle Costs ($)) [2]	10.45	8.75
First Cost	10.45	8.75
Future Cost (3.9%)	([3])	([3])
Functional Unit	one gallon	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted stationary equipment hydraulic fluids range from $8.75 to $10.45 (present value dollars) per gallon of hydraulic fluid.

5. Biodegradable Cutlery

Biodegradable cutlery is a group of products that is used as hand-held, disposable utensils designed for one-time use in eating food and that is capable of meeting ASTM D5338 standard for biodegradability.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased biodegradable cutlery, USDA identified 7 different manufacturers producing 15 individual biobased products. These 7 manufacturers do not necessarily include all manufacturers of biobased biodegradable cutlery, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D5338, Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions;
- ASTM D6400, Standard Specification for Compostable Plastics;
- D5209–92, Standard Test Method for Determining the Aerobic Biodegradation of Plastic Materials in the Presence of Municipal Sewage Sludge (Discontinued 2001); and
- Deutsches Institut fur Normung, the German Institute for Standardization #DIN CERTCO 54900 Standard for testing the compostability of polymeric materials.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, many Federal agencies routinely perform, or procure contract services to perform, food preparation and distribution activities that utilize disposable cutlery. Thus, they have a need for disposable cutlery and for services that require the use of disposable cutlery. Designation of biodegradable cutlery will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased biodegradable cutlery was performed for two of the products using the BEES analytical tool. Table 5 summarizes the BEES results for the two biodegradable cutlery products. As seen in Table 5, the environmental performance score, which includes human health, ranges from 0.0565 to 0.0690 points per 1000 pieces of cutlery.

The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 pieces of cutlery, expressed in 100ths of 1 percent.

TABLE 5.—SUMMARY OF BEES RESULTS FOR BIODEGRADABLE CUTLERY

Parameters	Biodegradable cutlery	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0565	0.0690
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0005
Ecological Toxicity (11%)	0.0113	0.0021
Eutrophication (5%)	0.0052	0.0014
Fossil Fuel Depletion (5%)	0.0236	0.0440
Global Warming (16%)	0.0056	0.0085
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0065	0.0079
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0024	0.0035
Water Intake (3%)	0.0017	0.0011
Economic Performance (Life Cycle Costs ($)) [2]	32.00	32.00
First Cost	32.00	32.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 pieces of cutlery	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted biodegradable cutlery was $32 present value dollars) per 1,000 pieces of cutlery.

6. Glass Cleaners

Glass cleaners are products designed for use in cleaning glass surfaces such as mirrors, car windows, and computer monitors.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

Procuring agencies should note that, as discussed in section II of this preamble, not all biobased cleaning products are ''environmentally preferable'' to non-biobased products. Unless cleaning products have been formulated to contain no (or reduced levels of) metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, or workers. When purchasing environmentally preferable cleaning products, Federal agencies must compare the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of both biobased and non-biobased products.

For biobased glass cleaners, USDA identified 16 different manufacturers producing 19 individual biobased products. These 16 manufacturers do not necessarily include all manufacturers of biobased glass cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one relevant measure of performance and are being used commercially. While applicable performance standards and other measures of performance may exist, applicable industry performance standards and relevant measures of performance against which these products have been typically tested, as identified by manufacturers of products within this item and by others, include:

- U.S. Navy, Navsea 6840 Surface Ship (Non-Submarine) Authorized Chemical Cleaning Products and Dispensing Systems.
- Green Seal, GS–37, Environmental Standard for General Purpose, Bathroom, Glass, and Carpet Cleaners used for Industrial and Institutional Purposes.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely procure cleaning and maintenance services and materials, including glass cleaners. Thus, they have a need for glass cleaners and for services that require the use of glass cleaners. Designation of glass cleaners will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased glass cleaners was performed for two of the products using the BEES analytical tool. Table 6 summarizes the BEES results for the two glass cleaners. As seen in Table 6, the environmental performance score, which includes human health, ranges from 0.08787 to 0.9818 points per 1,000 gallons of biobased glass cleaner, diluted and ready to use. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 gallons of glass cleaner, diluted and ready to use, expressed in 100ths of 1 percent.

TABLE 6.—SUMMARY OF BEES RESULTS FOR GLASS CLEANERS

Parameters	Glass cleaners	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0878	0.9818
Acidification (5%)	0.0000	0.0001
Criteria Air Pollutants (6%)	0.0008	0.0064
Ecological Toxicity (11%)	0.0092	0.0578
Eutrophication (5%)	0.0021	0.0124
Fossil Fuel Depletion (5%)	0.0310	0.3953
Global Warming (16%)	0.0078	0.1317
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0108	0.1840
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0042	0.0492
Water Intake (3%)	0.0219	0.1449
Economic Performance (Life Cycle Costs ($)) [2]	89.06	983.00
First Cost	89.06	983.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 gallons, diluted and ready to use.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted glass cleaners range from $89 to $983 (present value dollars) per 1,000 gallons of glass cleaner, diluted and ready to use.

7. Greases

Greases are lubricants composed of oils thickened with soaps or other thickeners to a semisolid or solid consistency. Grease composition (i.e., greases made with clay thickeners versus those made with metallic soap thickeners) must be considered carefully because of potential incompatibility when mixed. This can occur between two different biobased greases, between two different non-biobased (petroleum) greases, and between a biobased grease and a petroleum-based grease. Machinery lubricated with one particular type of grease must be purged properly before lubrication with an incompatible grease.

Greases are used in many different applications. Based on the information acquired, USDA is proposing to subcategorize this item into four specified-use subcategories and one ''not elsewhere specified'' subcategory as follows: Food grade greases, multipurpose greases, rail track greases, fifth wheel (coupling plate between the tractor trailer truck and the semi-trailer) greases, and greases that do not fit any of the other four subcategories. USDA believes this is reasonable because of the varying conditions that each of the four specified-use subcategories require of greases in order to perform satisfactorily and in accordance with any regulatory requirements (e.g., for food grade greases).

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased greases, USDA identified 18 different manufacturers producing 67 individual biobased products. For the five subcategories of greases for which USDA is proposing designation, USDA identified at least two manufacturers of each type. The 18 manufacturers total, and those identified for each subcategory of grease, do not necessarily include all manufacturers of biobased greases, merely those identified during USDA information gathering activities.

Information supplied by these manufacturers indicates that several of these products have been tested against multiple industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- ASTM D1264–03e1, Standard Test Method for Determining the Water Washout Characteristics of Lubricating Greases;
- ASTM D127–05, Standard Test Method for Drop Melting Point of Petroleum Wax, Including Petrolatum;
- ASTM D130–04, Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test;
- ASTM D1742–94 (2000)e1, Standard Test Method for Oil Separation from Lubricating Grease During Storage;
- ASTM D1743–05a, Standard Test Method for Determining Corrosion Preventive Properties of Lubricating Greases;
- ASTM D1748–02, Standard Test Method for Rust Protection by Metal Preservatives in the Humidity Cabinet;
- ASTM D1831–00e1, Standard Test Method for Roll Stability of Lubricating Grease;
- ASTM D217–02, Standard Test Methods for Cone Penetration of Lubricating Grease;
- ASTM D2265–00, Standard Test Method for Dropping Point of Lubricating Grease Over Wide Temperature Range;
- ASTM D2266–01, Standard Test Method for Wear Preventive Characteristics of Lubricating Grease (Four-Ball Method);
- ASTM D2270–04, Standard Practice for Calculating Viscosity Index From Kinematic Viscosity at 40 and 100 °C;
- ASTM D2509–03, Standard Test Method for Measurement of Load-Carrying Capacity of Lubricating Grease (Timken Method);
- ASTM D2569–97 (2002), Standard Test Method for Distillation of Pitch;
- ASTM D2596–97 (2002)e1, Standard Test Method for Measurement of Extreme-Pressure Properties of Lubricating Grease (Four-Ball Method);

- ASTM D445–04e2, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity);
- ASTM D566–02, Standard Test Method for Dropping Point of Lubricating Grease;
- ASTM D5864–00, Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components;
- ASTM D6184–98, Standard Test Method for Oil Separation from Lubricating Grease (Conical Sieve Method);
- ASTM D92–05a, Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester;
- ASTM D942–02, Standard Test Method for Oxidation Stability of Lubricating Greases by the Oxygen Bomb Method;
- ASTM D97–05, Standard Test Method for Pour Point of Petroleum Products;
- Co-ordinating European Council #CEC–L–33–A–93 Test to predict the potential biodegradation of mineral oil-based lubricants in soil; and
- National Lubricating Grease Institute #NLGI 2 Greases classified according to their consistency range as measured by the worked penetration at 25 °C (77 °C): 265 to 295.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely operate, or procure contract services to operate, the types of machinery and equipment that require the use of greases. Thus, they have a need for greases and for services that require the use of greases. Designation of greases will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased greases was performed for two of the products using the BEES analytical tool. Table 7 summarizes the BEES results for the two greases. As seen in Table 7, the environmental performance score, which includes human health, ranges from 0.0281 to 0.0451 points per gallon of grease. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one gallon of grease, expressed in 100ths of 1 percent.

TABLE 7.—SUMMARY OF BEES RESULTS FOR GREASES

Parameters	Greases	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0281	0.0451
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0002
Ecological Toxicity (11%)	0.0036	0.0103
Eutrophication (5%)	0.0026	0.0126
Fossil Fuel Depletion (5%)	0.0105	0.0067
Global Warming (16%)	0.0042	0.0046
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0035	0.0022
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0022	0.0034
Water Intake (3%)	0.0013	0.0051
Economic Performance (Life Cycle Costs ($)) [2]	14.84	52.03
First Cost	14.84	52.03
Future Cost (3.9%)	([3])	([3])
Functional Unit	one gallon	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted greases range from $14.84 to $52.03 (present value dollars) per gallon of grease.

8. Dust Suppressants

Dust suppressants are products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, and include products used in equivalent indoor applications (such as in indoor arenas where dirt parking lots may be found). This item does not cover products designed for indoor uses (such as the application of a dust suppressant to a dust mop), except as noted above.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in products and systems designed or procured for combat or combat-related missions and in spacecraft systems and launch support equipment.

For biobased dust suppressants, USDA identified 12 different manufacturers producing 13 individual biobased products. These 12 manufacturers do not necessarily include all manufacturers of biobased dust suppressants, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Missouri State Specifications; and
- Water runoff quality test (Minnesota DOT).

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely use, or procure contract services that use, dust suppressants in construction, forestry, transportation, and maintenance

activities. Thus, they have a need for dust suppressants and for services that require the use of dust suppressants. Designation of dust suppressants will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased dust suppressants was performed for two of the products using the BEES analytical tool. Table 8 summarizes the BEES results for the two dust suppressants. As seen in Table 8, the environmental performance score, which includes human health, ranges from 0.0335 to 0.7545 points per 1,000 square feet of application. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 square feet of application, expressed in 100ths of 1 percent.

TABLE 8.—SUMMARY OF BEES RESULTS FOR DUST SUPPRESSANTS

Parameters	Dust suppressants	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0335	0.7545
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0002	0.0052
Ecological Toxicity (11%)	0.0194	0.1417
Eutrophication (5%)	0.0015	0.1238
Fossil Fuel Depletion (5%)	0.0048	0.2064
Global Warming (16%)	0.0024	0.0965
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0025	0.0737
Indoor Air (11%)	0.0000	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0010	0.0421
Water Intake (3%)	0.0017	0.0651
Economic Performance (Life Cycle Costs ($)) [2]	7.20	47.00
First Cost	7.20	47.00
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 square feet of application.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted dust suppressants range from $7.20 to $47 (present value dollars) per 1,000 square feet of application.

9. Carpets

Carpets are floor coverings composed of woven fibers, with a backing.

Qualifying products within this item may overlap with the EPA-designated recovered content product: Carpet (polyester).

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased carpets, USDA identified 7 different manufacturers producing 19 individual biobased products. These 7 manufacturers do not necessarily include all manufacturers of biobased carpets, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one or more industry performance standards and are being used commercially. While other applicable performance standards may exist, applicable industry performance standards against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- Aachen Test, ISO/EN Dimensional Stability: Machine-made textile floor coverings—Determination of dimensional changes due to the effects of varied water and heat conditions;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 165 Crocking: Textile Floor Coverings—AATCC Crockmeter Method;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 164 Oxides of Nitrogen in the Atmosphere under High Humidities;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 129 Ozone in the Atmosphere under High Humidities;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 138 Cleaning: Washing of Textile Floor Coverings;
- American Association of Textile Chemists and Colorists #Color Fastness AATCC 107 Water;
- ASTM D1335, Standard Test Method for Tuft Bind of Pile Yarn Floor Coverings; and
- ASTM D3936, Standard Test Method for Resistance to Delamination of the Secondary Backing of Pile Yarn Floor Covering.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. USDA found that in fiscal year 2005 approximately $34 million of carpet were purchased on GSA schedule, of which $5.2 million met the recycled content as defined by Executive Order 13101. While it is unknown what percentage of total carpet purchased by the Federal government the $34 million represents, it is clear that Federal agencies purchase and install large volumes of carpets. Designation of carpets, therefore, will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased carpets was performed for two of the products using the BEES analytical tool. Table 9 summarizes the BEES results for the two carpets. As seen in Table 9, the environmental performance score, which includes

human health, was 0.2429 per 1 square yard of carpet over 50 years for both samples. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to one square yard of carpet over 50 years, expressed in 100ths of 1 percent.

TABLE 9.—SUMMARY OF BEES RESULTS FOR CARPETS

Parameters	Carpets
	Sample A Sample B
BEES Environmental Performance—Total Score [1]	0.2429
Acidification (5%)	0.0000
Criteria Air Pollutants (6%)	0.0014
Ecological Toxicity (11%)	0.0165
Eutrophication (5%)	0.0112
Fossil Fuel Depletion (5%)	0.1028
Global Warming (16%)	0.0240
Habitat Alteration (16%)	0.0000
Human Health (11%)	0.0278
Indoor Air (11%)	0.0377
Ozone Depletion (5%)	0.0000
Smog (6%)	0.0079
Water Intake (3%)	0.0136
Economic Performance (Life Cycle Costs ($)) [2]	39.22
First Cost	20.00
Future Cost (3.9%)	19.22
Functional Unit	one square yard over 50 years

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.

The life cycle cost of both submitted carpets was $39.22 per square yard of carpet over 50 years.

10. Carpet and Upholstery Cleaners

Carpet and upholstery cleaners are products used to clean carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces. As proposed, this item does not include spot cleaners.

For the reasons cited earlier in this notice, USDA is proposing to exempt this item from preferred procurement under the FB4P when used in spacecraft systems and launch support equipment.

For biobased carpet and upholstery cleaners, USDA identified 13 different manufacturers producing 17 individual biobased products. These 13 manufacturers do not necessarily include all manufacturers of biobased carpet and upholstery cleaners, merely those identified during USDA information gathering activities. Information supplied by these manufacturers indicates that these products are typically tested against one relevant measure of performance and are being used commercially. While other relevant measurements of performance may exist, applicable relevant measurements of performance against which these products have been typically tested, as identified by manufacturers of products within this item, include:

- U.S. Navy, Navsea 6840 Surface Ship (Non-Submarine) Authorized Chemical Cleaning Products and Dispensing Systems.

USDA attempted to gather data on the potential market for biobased products within the Federal government as discussed in the section on 2-cycle engine oils. These attempts were largely unsuccessful. However, Federal agencies routinely perform, and procure services that perform, the types of cleaning activities that utilize carpet and upholstery cleaners. Thus, they have a need for carpet and upholstery cleaners and for services that require the use of carpet and upholstery cleaners. Designation of carpet and upholstery cleaners will promote the use of biobased products, furthering the objectives of this program.

An analysis of the environmental and human health benefits and the life cycle costs of biobased carpet and upholstery cleaners was performed for two of the products using the BEES analytical tool. Table 10 summarizes the BEES results for the two carpet and upholstery cleaners. As seen in Table 10, the environmental performance score, which includes human health, ranges from 0.0898 to 0.1542 points per 1,000 square feet of carpet cleaned. The environmental performance score indicates the share of annual per capita U.S. environmental impacts that is attributable to 1,000 square feet of carpet cleaned, expressed in 100ths of 1 percent.

TABLE 10.—SUMMARY OF BEES RESULTS FOR CARPET AND UPHOLSTERY CLEANERS

Parameters	Carpet and upholstery cleaners	
	Sample A	Sample B
BEES Environmental Performance—Total Score [1]	0.0898	0.1542
Acidification (5%)	0.0000	0.0000
Criteria Air Pollutants (6%)	0.0007	0.0015
Ecological Toxicity (11%)	0.0069	0.0124
Eutrophication (5%)	0.0007	0.0016
Fossil Fuel Depletion (5%)	0.0330	0.0733

TABLE 10.—SUMMARY OF BEES RESULTS FOR CARPET AND UPHOLSTERY CLEANERS—Continued

Parameters	Carpet and upholstery cleaners	
	Sample A	Sample B
Global Warming (16%)	0.0101	0.0233
Habitat Alteration (16%)	0.0000	0.0000
Human Health (11%)	0.0164	0.0370
Indoor Air (11%)	0.0196	0.0000
Ozone Depletion (5%)	0.0000	0.0000
Smog (6%)	0.0024	0.0049
Water Intake (3%)	0.0000	0.0002
Economic Performance (Life Cycle Costs($))[2]	20.29	4.55
First Cost	20.29	4.55
Future Cost (3.9%)	([3])	([3])
Functional Unit	1,000 square feet of carpet cleaned.	

[1] Numbers in parentheses indicate weighting factor.
[2] Costs are per functional unit.
[3] For this item, no significant/quantifiable performance or durability differences were identified among competing alternative products. Therefore, future costs were not calculated.

The life cycle cost of the submitted carpet and upholstery cleaners range from $4.55 to $20.29 (present value dollars) per 1,000 square feet of carpet cleaned. Based on information supplied by the manufacturers, USDA has confirmed that the qualifying biobased content in each of the samples tested is derived, in whole or in significant part, from renewable domestic agricultural or forestry material.

C. Minimum Biobased Contents

Section 9002(e)(1)(C) directs USDA to recommend minimum biobased content levels where appropriate. In today's proposed rulemaking, USDA is proposing minimum biobased product content for each of the 10 items proposed for designation based on information currently available to USDA.

As discussed in Section IV.A of this preamble, USDA relied entirely on manufacturers' voluntary submission of samples to support the proposed designation of these 10 items. The data presented in the following paragraphs are the test results from all of the product samples that were submitted for analysis. It is the responsibility of the manufacturers to ''self-certify'' that each product being offered as a biobased product for preferred procurement contains qualifying feedstock. As contained in the Guidelines, USDA will consider qualifying feedstocks for biobased products originating in ''designated countries'' (as that term is defined in the Federal Acquisition Regulation (FAR) § 25.003)) as well as from the United States. USDA will develop a monitoring process for these self-certifications to ensure manufacturers are using qualifying feedstocks. If misrepresentations are found, USDA will remove the subject biobased product from the preferred procurement program and may take further actions as deemed appropriate.

As a result of public comments received on the first designated items rulemaking proposal, USDA decided to account for the slight imprecision in the analytical method used to determine biobased content of products when establishing the minimum biobased content. Thus, rather than establishing the minimum biobased content for an item at the tested biobased content of the product selected as the basis for the minimum value, USDA is establishing the minimum biobased content at a level 3 percentage points less than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results.

USDA has determined that setting a minimum biobased content for designated items is appropriate. Establishing a minimum biobased content will encourage competition among manufacturers to develop products with higher biobased contents and will prevent products with de minimus biobased content from being purchased as a means of satisfying the requirements of section 9002. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content for an item at a level met by several of the tested products will provide more products from which procurement officials may choose, will encourage the most widespread usage of biobased products by procuring agencies, and is expected to accomplish the objectives of section 9002. Procuring agencies are encouraged to seek products with the highest biobased content that is practicable in all 10 of the proposed designated items.

The following paragraphs summarize the information that USDA used to propose minimum biobased contents within each proposed designated item.

1. 2-Cycle Engine Oils

Seven of the 17 biobased 2-cycle engine oils identified have been tested for biobased content using ASTM D6866.[1] The biobased content of these 7 samples ranged from 6 percent to 77 percent.

USDA is proposing to set the minimum biobased content for this item at 7 percent, based on the product with a tested biobased content of 10 percent. USDA evaluated the manufacturer's performance claims for the product whose biobased content was tested at 6 percent. The available information for this product did not indicate any unique performance characteristics or features not found in products with a higher biobased content. Therefore, USDA dropped this product from consideration in setting the minimum biobased content for the item. USDA found that the product with 10 percent biobased content, the second-lowest tested value, was formulated to meet the

[1] ASTM D6866 (Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis) is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

specifications of Japanese small engine manufacturers. None of the other products tested made this claim or indicated that they had been tested using the Japanese performance standards. Because of the predominance of Japanese engines in the marketplace, USDA believes that establishing a minimum biobased content for this item based on a product formulated to meet their performance specifications is reasonable. To account for possible variability in the results of ASTM D6866, as discussed earlier, the tested 10 percent value was then adjusted to 7 percent.

2. Lip Care Products

Two of the 28 available biobased lip care products have been tested for biobased content using ASTM D6866. The biobased content of these two lip care products was 85 percent and 88 percent.

USDA is proposing to set the minimum biobased content for this item at 82 percent, based on the product with a tested biobased content of 85 percent. While no differences were found in the performance of the two products tested, USDA believes that the slight difference between the biobased content of two products tested is insignificant. Also, establishing the minimum biobased content for the item based on the lower tested value offers procurement agents more choice in selecting products to purchase.

3. Biodegradable Films

Thirteen of the 45 biobased biodegradable films identified have been tested for biobased content using ASTM D6866. The biobased content of these 13 biodegradable films ranged from 1 percent to 96 percent. USDA will not establish the minimum biobased content for a designated item based on products with essentially no biobased content; that is, in this instance, on either the product with a tested biobased content of 1 percent or the product with a tested biobased content of 2 percent. The biobased content of the remaining 11 products ranged from 25 percent to 96 percent.

USDA is proposing to set the minimum biobased content for this item at 22 percent, based on the product with a tested biobased content of 25 percent. The manufacturer of the product with the biobased content of 25 percent also manufactures biodegradable films with 48 and 52 percent biobased content. The product with 25 percent biobased content has a significantly longer shelf-life than the other products. Because Federal procuring agencies are likely to purchase biodegradable films in larger quantities than the average consumer, USDA believes that shelf-life is a key performance criteria for establishing the minimum biobased content of this item. Therefore, USDA is proposing to establish the minimum biobased content for this item based on this particular product. Furthermore, establishing the minimum biobased content level at this level will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

4. Stationary Equipment Hydraulic Fluids

Twenty two of the 66 biobased stationary equipment hydraulic fluids identified have been tested for biobased content using ASTM D6866. The biobased content of these 22 biobased stationary equipment hydraulic fluids ranged from 49 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 46 percent, based on the product with a tested biobased content of 49. Stationary equipment hydraulic fluids can be formulated to meet a wide range of demands. Because of the resulting range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

5. Biodegradable Cutlery

Five of the 15 biobased biodegradable cutlery identified have been tested for biobased content using ASTM D6866. The biobased contents of these five biobased biodegradable products ranged from 36 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 33 percent, based on the product with a tested biobased content of 36 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

6. Glass Cleaners

Seven of the 19 biobased glass cleaners identified have been tested for biobased content using ASTM D6866. The biobased contents of these glass cleaners ranged from 0 percent to 67 percent. The products with tested biobased contents of 0 and 1 percent were not considered in establishing the minimum biobased content for this proposed designated item. The one product whose tested biobased content was 0 percent was eliminated from consideration because, according to the results of the analysis, the product would not be considered a biobased product. Further, USDA will not establish the minimum biobased content for a designated item based on products with essentially no biobased content; that is, in this instance on a product with a tested biobased content of 1 percent. The biobased content of the remaining five products ranged from 26 percent to 67 percent.

USDA is proposing to set the minimum biobased content for this item at 23 percent, based on the product with a tested biobased content of 26 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

7. Greases

Eighteen of the 67 biobased greases identified have been tested for biobased

content using ASTM D6866. For the five proposed subcategories of greases, the results obtained and the proposed minimum biobased contents are discussed in the following paragraphs by proposed grease subcategory.

Food grade greases. The biobased content was measured for three food grade greases. The tested biobased contents were 45, 62, and 95 percent.

USDA is proposing to set the minimum biobased content for food grade greases at 42 percent, based on the product with a tested biobased content of 45 percent. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

Multipurpose greases. The biobased content was measured for three multipurpose greases. The tested biobased contents were 76, 76, and 76 percent.

USDA is proposing to set the minimum biobased content for food grade greases at 73 percent, based on the tested biobased content of 76 percent for all three multipurpose greases.

Rail track greases. The biobased content was measured for six rail track greases. The tested biobased contents ranged from 33 percent to 66 percent.

USDA is proposing to set the minimum biobased content for rail track greases at 30 percent, based on the two products with a tested biobased content of 33 percent. The range in biobased contents is due to formulations necessary to meet seasonal requirements. Because one would not use a rail track grease formulated for winter use in the summer (and vice-versa), USDA does not believe it is necessary to subdivide this item. Instead, USDA believes that it is appropriate to set a single minimum biobased content and is proposing to set it based on the lowest tested biobased content. By doing so, USDA believes that it is setting a minimum biobased content level that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics, which is in the best interests of this program. Further, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

Truck greases. The biobased content was measured for three truck greases. The tested biobased contents were 75, 77, and 77 percent.

USDA is proposing to set the minimum biobased content for truck greases at 72 percent, based on the product with a tested biobased content of 77 percent. USDA believes that the slight difference between the biobased content of three products tested is insignificant, and establishing the minimum biobased content for the item based on the lower tested value offers procurement agents more choice in selecting truck grease products to purchase.

Greases not elsewhere specified. The biobased content was measured for four greases that did not fit any of the four specified subcategories. The tested biobased contents ranged from 78 percent to 96 percent.

USDA is proposing to set the minimum biobased content for greases not elsewhere specified at 75 percent, based on the product with a tested biobased content of 78 percent. Because of the nature of this subcategory, grease products within it will be formulated to meet a wide range of demands. Because of the resulting range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of these ''other'' grease products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow these ''other'' grease products to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled ''other'' grease products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

8. Dust Suppressants

Five of the 13 biobased dust suppressants identified have been tested for biobased content using ASTM D6866. The biobased contents of these 5 biobased dust suppressants ranged from 69 percent to 100 percent.

USDA is proposing to set the minimum biobased content for this item at 66 percent, based on the product with a tested biobased content of 69 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled, including the product with 69 percent biobased content, which is the only one of the products that is formulated specifically as a concentrate to be mixed with water. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

9. Carpet

Nine of the 19 biobased carpet identified have been tested for biobased content using ASTM D6866. The testing was conducted on the entire carpet samples (*i.e.*, face and backing). The biobased content of these nine biobased carpets ranged from 0 percent to 37 percent. The two products whose tested biobased content was 0 percent was eliminated from consideration because, according to the results of the analysis, the product would not be considered a biobased product. The biobased content of the remaining 7 products ranged from 10 percent to 37 percent.

USDA is proposing to set the minimum biobased content for this item at 7 percent, based on the product with a tested biobased content of 10 percent. For each of the carpet samples tested, the biobased component of the carpets sampled was the material used as the carpet backing. The sampled products with a higher biobased content contain similar biobased materials, but had higher biobased contents because they simply had a thicker layer of the backing material. Thus, those products with the lower biobased content are likely to be less costly and more competitive in markets such as the commercial carpet segment. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow

products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products also will provide more products from which procurement officials may choose and will encourage the most widespread usage of biobased products by procuring agencies.

10. Carpet and Upholstery Cleaners

Ten of the 17 biobased carpet and upholstery cleaners identified have been tested for biobased content using ASTM D6866. The biobased content of these 10 biobased carpet and upholstery cleaners ranged from 10 percent to 99 percent. Two products, with biobased contents of 10 and 15 percent are characterized by their manufacturers as ''spot removers.'' USDA did not consider these products in establishing the minimum biobased content because this designated item is intended to include those products formulated for use in larger scale cleaning operations than would be typical for ''spot removers.'' The biobased content of the eight remaining products ranged from 37 percent to 99 percent.

USDA is proposing to set the minimum biobased content for this item at 34 percent, based on the product with a biobased content of 37 percent. USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled. USDA believes that it is in the best interest of the preferred procurement program for minimum biobased contents to be set at levels that will realistically allow products to possess the necessary performance attributes and allow them to compete with non-biobased products in performance and economics. Furthermore, setting the minimum biobased content level based on the lowest level found among the sampled products will offer procuring agencies more choices in selecting products to purchase and will encourage the most widespread usage of biobased products by procuring agencies.

D. Effective Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, under the terms of the proposed rule, procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated item would take effect.

USDA proposes a one-year period before the procurement preferences would take effect based on an understanding that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Section 9002(d) of FSRIA and section 2902(c) of 7 CFR part 2902 explicitly acknowledge the latter need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing the designated items. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements, including manufacturers' warranties for machinery in which the biobased products would be used.

By the time these items are promulgated for designation, Federal agencies will have had a minimum of 18 months (from when these designated items were proposed), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated items take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated items.

V. Where Can Agencies Get More Information on These USDA-Designated Items?

Once the item designations in today's proposal become final, manufacturers and vendors voluntarily may post information on specific products, including product and contact information, on the USDA biobased products Web site *http://www.biobased.oce.usda.gov.* USDA will periodically audit the information displayed on the Web site and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the Web site, agencies will also be able to obtain the voluntarily-posted information on each product concerning: Relative price; life cycle costs; hot links directly to a manufacturer's or vendor's Web site (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information from the BEES analysis or the alternative analysis embedded in the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products.''

USDA has linked its Web site to DoD's list of specifications and standards, which can be used as guidance when procuring products. To access this list, go to USDA's FB4P Web site and click on the ''Product Submission'' tab and look for the DoD Specifications link.

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order 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 this Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866. The annual economic effect associated with today's proposed rule

has not been quantified because the information necessary to estimate the effect does not exist. As was discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage of the 10 items proposed for designation. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's proposed rule would necessitate estimating the anticipated market penetration of biobased products, which would entail many assumptions and, thus, be of questionable value. Also, the program allows procuring agencies the option of not purchasing biobased products if the costs are deemed ''unreasonable.'' Under this program, the determination of ''unreasonable'' costs will be made by individual agencies. USDA knows these agencies will consider such factors as price, life-cycle costs, and environmental benefits in determining whether the cost of a biobased product is determined to be ''reasonable'' or ''unreasonable.'' However, until the program is actually implemented by the various agencies, it is impossible to quantify the impact this option would have on the economic effect of the rule. Therefore, USDA relied on a qualitative assessment to reach the judgment that the annual economic effect of the designation of these 10 items is less than $100 million, and likely to be substantially less than $100 million. This judgment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased) and, secondarily, on the ability of procuring agencies not to purchase these items if costs are judged unreasonable, which would reduce the economic effect.

1. Summary of Impacts

Today's proposed rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses to begin supplying biobased materials to manufacturers of 2-cycle engine oils, lip care products, biodegradable films, stationary equipment hydraulic fluids, biodegradable cutlery, glass cleaners, greases, dust suppressants, carpets, and carpet and upholstery cleaners and to begin supplying these products made with biobased materials to Federal agencies and their contractors. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for these biobased materials and products. However, other businesses that manufacture and supply only non-qualifying products and do not offer a biobased alternative product may experience a decrease in demand for their products. Thus, today's proposed rule will likely increase the demand for biobased products, while decreasing the demand for non-qualifying products. It is anticipated that this will create a largely ''offsetting'' economic impact.

USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's proposed rule. If a business currently supplies any of the items proposed for designation to a procuring agency and those products do not qualify as biobased products, the proposed rule may reduce that company's ability to compete for future contracts. However, the proposed rule will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, many businesses, including small businesses, that market to Federal agencies and their contractors have the option of modifying their product lines to meet the new biobased specifications.

2. Summary of Benefits

The designation of these 10 items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for biobased products and, thus, for the many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the nation's energy security by substituting biobased products for products derived from imported oil and natural gas. The increased demand for biobased products will also lead to the substitution of products with a possibly more benign or beneficial environmental impact, as compared to the use of non-biobased products. By purchasing these biobased products, procuring agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for biobased materials used in these 10 items. However, because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of today's proposed rule. USDA, however, anticipates the annual economic effect of the designation of these 10 items to be substantially below the $100 million threshold. In addition, today's proposed rule does not do any of the following: Create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these 10 items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Biobased Products Preferred Procurement Program in section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the biobased procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, the proposed rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under

certain conditions relating to the availability, performance, or cost of biobased items. Today's proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of today's proposed rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the 10 items proposed for designation by today's proposed rulemaking, the number is expected to be small. Because biobased products represent an emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by today's proposed rulemaking is not expected to be substantial.

After considering the economic impacts of today's proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each item designated. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Add §§ 2902.26 through 2902.35 to subpart B to read as follows:

Subpart B—Designated Items

Sec.
2902.26 2–Cycle Engine Oils.
2902.27 Lip Care Products.
2902.28 Biodegradable Films.
2902.29 Stationary Equipment Hydraulic Fluids.
2902.30 Biodegradable Cutlery.
2902.31 Glass Cleaners.
2902.32 Greases.
2902.33 Dust Suppressants.
2902.34 Carpets.
2902.35 Carpet and Upholstery Cleaners.

Subpart B—Designated Items

* * * * *

§ 2902.26 2–Cycle Engine Oils.

(a) *Definition.* Lubricants formulated to provide clean-burning lubrication, decreased spark plug fouling, reduced deposit formation, and reduced engine wear in 2-cycle gasoline engines.

(b) *Minimum biobased content.* The minimum biobased content is 7 percent and shall be based on the amount of

qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased 2-cycle engine oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased 2-cycle engine oils.

(d) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.27 Lip Care Products.

(a) *Definition.* Personal care products formulated to replenish the moisture and/or prevent drying of the lips.

(b) *Minimum biobased content.* The minimum biobased content is 82 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lip care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased lip care products.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.28 Biodegradable Films.

(a) *Definition.* Films used in packaging, wrappings, linings, and other similar applications and that are capable of meeting ASTM D6400 standard for biodegradability.

(b) *Minimum biobased content.* The minimum biobased content is 22 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased biodegradable films. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased biodegradable films.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.29 Stationary Equipment Hydraulic Fluids.

(a) *Definition.* Hydraulic fluids formulated for use as a mechanical power transmission medium (and to provide wear, rust, and oxidation protection) in the hydraulic systems of stationary equipment.

(b) *Minimum biobased content.* The minimum biobased content is 46 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased stationary equipment hydraulic fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased stationary equipment hydraulic fluids.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated building insulation and which product should be afforded the preference in purchasing.

(e) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.30 Biodegradable Cutlery.

(a) *Definition.* Hand-held, disposable utensils designed for one-time use in eating food and that are capable of meeting ASTM D5338 standard for biodegradability.

(b) *Minimum biobased content.* The minimum biobased content is 33 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased biodegradable cutlery. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased biodegradable cutlery.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.31 Glass Cleaners.

(a) *Definition.* Cleaning products designed specifically for use in cleaning glass surfaces, such as windows, mirrors, car windows, and computer monitors.

(b) *Minimum biobased content.* The minimum biobased content is 23 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the cleaner must be determined before dilution.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased glass cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased glass cleaners.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.32 Greases.

(a) *Definition.* (1) Lubricants composed of oils thickened with soaps or other thickeners to a semisolid or solid consistency.

(2) Greases for which minimum biobased contents under paragraph (b) of this section apply are:

(i) *Food grade greases.* Lubricants that are designed for use on food-processing equipment as a protective anti-rust film, as a release agent on gaskets or seals of tank closures, or on machine parts and equipment in locations in which there is exposure of the lubricated part to food.

(ii) *Multipurpose greases.* Lubricants that are designed for general use.

(iii) *Rail track greases.* Lubricants that are designed for use on railroad tracks or heavy crane tracks.

(iv) *Truck greases.* Lubricants that are designed for use on the fifth wheel of tractor trailer trucks onto which the semi-trailer rests and pivots.

(v) *Greases not elsewhere specified.* Lubricants that meet the general definition of greases as defined in paragraph (a) of this section, but are not otherwise covered by paragraphs (b)(1) through (5) of this section.

(b) *Minimum biobased content.* The minimum biobased content for all greases shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Food grade grease—42 percent.

(2) Multipurpose grease—73 percent.

(3) Rail track grease—30 percent.

(4) Truck grease—72 percent.

(5) Greases not elsewhere specified—75 percent.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased greases. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased greases.

(d) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.33 Dust Suppressants.

(a) *Definition.* Products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, including products used in equivalent indoor applications.

(b) *Minimum biobased content.* The minimum biobased content is 66 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the suppressant must be determined before dilution.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dust suppressants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dust suppressants.

(d) *Exemptions.* The following applications are exempt for the preferred procurement requirement for this item:

(1) Military equipment: Product or system designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

§ 2902.34 Carpets.

(a) *Definition.* Floor coverings composed of woven fibers, with a backing.

(b) *Minimum biobased content.* The minimum biobased content is 7 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased carpet.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Carpets (polyester). USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated building insulation and which product should be afforded the preference in purchasing.

(e) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

§ 2902.35 Carpet and Upholstery Cleaners.

(a) *Definition.* Cleaning products formulated specifically for use in cleaning carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces. Spot cleaners are not included in this item.

(b) *Minimum biobased content.* The minimum biobased content is 34 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet and upholstery cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased carpet and upholstery cleaners.

(d) *Exemptions.* Spacecraft systems and launch support equipment applications are exempt from the preferred procurement requirement for this item.

Dated: August 10, 2006.

Keith Collins,

Chief Economist, U.S. Department of Agriculture.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 222 and 229

Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 17]

RIN 2130–AB73

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of FRA's April 27, 2005 final rule that required that the locomotive horn be sounded while trains approach and enter public highway-rail grade crossings. This document amends and clarifies the final rule, in response to petitions for reconsideration and associated letters in support that have been submitted by interested parties, including the railroad industry, rail unions, and a manufacturer of traffic channelization devices.

DATES: The effective date is September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

1. Background

On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2230) addressing the use of locomotive horns at public highway-rail grade crossings. This rulemaking was mandated by Public Law 103–440, which added section 20153 to title 49 of the United States Code. The statute requires the Secretary of Transportation (whose authority in this area has been delegated to the Federal Railroad Administrator under 49 CFR 1.49) to issue regulations that require the use of locomotive horns at public grade crossings, but gives the Secretary the authority to make reasonable exceptions.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), FRA solicited written comments from the public. By the close of the comment period on May 26, 2000, approximately 3,000 comments had been filed with this agency regarding the NPRM and the associated Draft Environmental Impact Statement. As is FRA's practice, FRA held the public docket open for late filed comments and considered them to the extent possible.

Due to the substantial and wide-ranging public interest in the NPRM, FRA conducted a series of public hearings throughout the United States in which local citizens, local and State officials, Congressmen, and Senators provided testimony. Twelve hearings were held (Washington, DC; Fort Lauderdale, Florida; Pendleton, Oregon; San Bernadino, California; Chicago, Illinois (four hearings were held in the greater Chicago area); Berea, Ohio; South Bend, Indiana; Salem, Massachusetts; and Madison, Wisconsin) at which more than 350 people testified.

On December 18, 2003, FRA published an Interim Final Rule in the **Federal Register** (68 FR 70586). Even though FRA could have proceeded directly to the final rule stage, FRA chose to issue an interim final rule in order to give the public an opportunity to comment on changes that had been made to the rule. FRA also held a public hearing in Washington, DC on February 4, 2004. By the close of the extended comment period, over 1,400 comments had been filed with the agency regarding the Interim Final Rule. As is FRA's practice, FRA held the public docket open for late-filed comments and considered them to the extent possible. In order to avoid imposing inconsistent regulatory standards for quiet zone creation and establishment, FRA extended the effective date of the Interim Final Rule on November 22, 2004 (69 FR 67858) and on March 18, 2005 (70 FR 13117) so that the Interim Final Rule would not take effect before the final rule was issued.

On April 27, 2005, FRA published a Final Rule in the **Federal Register** (70 FR 21844). After the final rule was published, FRA received petitions for reconsideration and associated letters in support from the Association of American Railroads, Mr. James Adams of Placentia, California, GE Transportation-Rail, United Transportation Union, Brotherhood of Locomotive Engineers and Trainmen, BNSF Railway Company and Qwick Kurb, Inc. In addition, the Association of American Railroads submitted a petition for Emergency Order, which was subsequently denied.

2. Statutory Mandate

On November 2, 1994, Congress passed Public Law 103–440 (''Act'') which added section 20153 to title 49 of the United States Code (''title 49''). Subsections (I) and (j) were added on October 9, 1996 when section 20153 was amended by Public Law 104–264. The Act requires the use of locomotive horns at public highway-rail grade crossings, but gives FRA the authority to make reasonable exceptions.

FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Final Rule) complied with the statutory mandate contained within section 20153 of title 49. As required by section 20153(b) of title 49, the final rule requires locomotive horn sounding by trains that approach and enter public highway-rail grade crossings. (See rule § 222.21.) However, as allowed by 49 U.S.C. 20153(c), the final rule contains exceptions for certain categories of rail operations and highway-rail grade crossings.

Section 222.33 of the rule provides that a railroad operating over a public highway-rail grade crossing may, at its discretion, choose not to sound the locomotive horn if the locomotive speed is 15 miles per hour or less and the train crew or appropriately equipped flaggers provide warning to motorists. FRA has determined that these limited types of rail operations do not present a significant risk of loss of life or serious personal injury.

Locomotive horn sounding is also not required within highway-rail grade crossing corridors that are equipped with supplementary safety measures (SSMs) at each public highway-rail grade crossing. In addition, locomotive horn sounding is not required within highway-rail grade crossing corridors that have a Quiet Zone Risk Index at or below the Nationwide Significant Risk Threshold or the Risk Index With Horns. These highway-rail grade crossing corridors have been deemed, by the Administrator, to constitute categories of highway-rail grade crossings that do not present a significant risk with respect to loss of life or serious personal injury or that fully compensate for the absence of the warning provided by the locomotive horn. Therefore, communities with highway-rail grade crossing corridors that meet either of these standards may silence the locomotive horn within the crossing corridor, if all other applicable quiet zone requirements have been met. (See § 222.39.)

Section 20153(i) of title 49 requires FRA to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings.'' FRA has complied with this requirement in several ways. Until December 24, 2005, the final rule

allowed communities to establish Pre-Rule Quiet Zones, if the Quiet Zone Risk Index was at, or below, two times the Nationwide Significant Risk Threshold and there were no relevant collisions within the quiet zone since April 27, 2000. (See § 222.41.) It should also be noted that the final rule allows communities to establish Pre-Rule Quiet Zones, if SSMs have been implemented at every public grade crossing within the quiet zone or if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold.) Additionally, the rule allows Pre-Rule Quiet Zone communities to take additional time (up to eight years from the effective date of the final rule) within which to implement safety improvements that will bring them into compliance with the requirements of the rule. This ''grace period'' has been included in the rule in order to comply with 49 U.S.C. 20153(i)(2), which requires FRA to provide ''a reasonable amount of time for [pre-existing whistle ban] communities to install SSMs''.

Section 20153 of title 49 prohibits FRA from entertaining single-party petitions for waiver from the regulatory requirements issued under the authority of 49 U.S.C. 20153, unless FRA determines that this prohibition against single-party waiver petitions ''* * * is not likely to contribute significantly to public safety.'' Therefore, § 222.15 of the final rule, which governs the process for obtaining a waiver from the requirements of 49 CFR Part 222, requires joint filing of waiver petitions by the railroad and public authority, unless the Associate Administrator makes the determination that joint submission of an individual waiver petition would not be likely to significantly contribute to public safety.

Section 222.55 of the final rule addresses the manner in which new SSMs and ASMs are demonstrated and approved for use. Paragraph (c) of this section, which reflects the requirements contained within 49 U.S.C. 20153(e), specifically provides that the Associate Administrator may order railroad carriers operating over a crossing or crossings to temporarily cease sounding the locomotive horn at the crossing(s) to demonstrate proposed new SSMs and ASMs that have been subject to prior testing and evaluation.

Section 20153(f) of title 49 explicitly gives discretion to the Secretary as to whether private highway-rail grade crossings, pedestrian crossings, and crossings utilized primarily by nonmotorized and other special vehicles should be subject this regulation. FRA has decided to refrain from exercising jurisdiction over crossings utilized primarily by nonmotorized and other special vehicles in this final rule. FRA has, however, exercised its jurisdiction, in a limited manner, over private and pedestrian grade crossings. Under the final rule amendments issued today, the sounding of locomotive audible warning devices at private and pedestrian crossings will be governed by this rule, if State law requires the sounding of locomotive audible warning devices at these crossings. (§§ 222.25 and 222.27) However, routine locomotive horn sounding is prohibited at private and pedestrian grade crossings located within quiet zones, even if other locomotive audible warning devices must be sounded at these crossings per State and local law.

Section 222.7 of the rule contains a concise statement of the rule's impact with respect to 49 U.S.C. 20106 (national uniformity of regulation). This statement of the rule's effect on State and local law, which was required by 49 U.S.C. 20153(h), provides that the rule, when effective, will preempt State and local laws that govern locomotive horn use at public highway-rail grade crossings. Under the final rule amendments issued today, State and local laws that require the sounding of locomotive audible warning devices at public, private and pedestrian grade crossings will be preempted to the limited extent described in §§ 222.21(e), 222.25 and 222.27 of the rule. However, as stated in § 222.7(b), this rule does not preempt State and local laws governing the sounding of locomotive audible warning devices at Chicago Region highway-rail grade crossings where railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

Lastly, the final rule also complied with the statutory one-year delay requirement. Section 20153(j) of title 49 prohibits any regulations issued under its authority from becoming effective before the 365th day following the date of publication of the final rule. On December 18, 2003, FRA published an Interim Final Rule on the Use of Locomotive Horns at Highway-rail Grade Crossings, which had the same force and effect as a final rule. After reviewing approximately 1,400 comments on the interim final rule, FRA issued a final rule that granted additional relief to States and local communities and became effective on June 24, 2005. The final rule has therefore complied with 49 U.S.C. 20153(j) because more than the required 365 days elapsed between issuance of the interim final rule on December 18, 2003 and the effective date of the rule on June 24, 2005.

3. Emergency Order 15

Emergency Order 15, issued in 1991, requires the Florida East Coast Railway Company to sound locomotive horns at all public grade crossings. The Emergency Order preempted State and local laws that permitted nighttime bans on the use of locomotive horns. Amendments to the Emergency Order did, however, permit the establishment of quiet zones if supplementary safety measures were implemented at every crossing within a proposed quiet zone. The supplementary safety measures specified in the Emergency Order are similar, but are not identical, to the supplementary safety measures contained in FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings (70 FR 21844).

FRA has not yet rescinded Emergency Order 15. Therefore, FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings does not apply to public highway-rail grade crossings within the State of Florida that are currently subject to Emergency Order 15. On April 15, 2005, a public conference was held in Florida, at which FRA solicited comments on the appropriate excess risk estimate that should be applied to public highway-rail grade crossings that are currently subject to Emergency Order 15. While FRA intends to specifically address this issue in the near future, comments that have been received on this issue are still under consideration at this time.

4. Rule Changes

This brief overview of the major amendments that have been made to the Final Rule is provided for the reader's convenience. Because this section merely provides an overview, it should not be relied upon for a comprehensive discussion of all final rule amendments. Indeed, this full document should be read together with the previous documents issued in the proceeding. Inasmuch as the Final Rule, Interim Final Rule and Notice of Proposed Rulemaking contained extensive discussion of both the background of the issues involved in this rulemaking and the rationale behind decisions relating to those issues, FRA emphasizes that these amendments should be read in conjunction with the Final Rule, Interim Final Rule and Notice of Proposed Rulemaking. Unless the positions and rationale expressed in those documents have explicitly changed in the subsequent rulemaking documents, the reader should understand that those

positions and rationale remain those of FRA.

Summary of Changes to the Final Rule

- These amendments extend the compliance date of the time-based locomotive horn sounding requirements until December 15, 2006. (*See* § 222.21(b) for more information.)
- A ''good faith'' exception has been incorporated into the time-based locomotive horn sounding requirements for locomotive engineers who are unable to precisely estimate their time of arrival at upcoming grade crossings. (*See* § 222.21(b)(2) for more information.)
- An exception has been added to the 15-second minimum locomotive horn sounding requirement for locomotives and trains that re-initiate movement after having stopped in close proximity to a public highway-rail grade crossing. (*See* § 222.21(d) for more information.)
- These amendments expand the scope of the time-based locomotive horn sounding requirements to cover the sounding of any locomotive audible warning device (*i.e.*, locomotive bells) at public highway-rail grade crossings. (*See* § 222.21(e) for more information.)
- If State law requires the sounding of locomotive audible warning devices at private and/or pedestrian crossings, these amendments will require railroads to sound the locomotive audible warning device in a time-based manner. (*See* §§ 222.25 and 222.27 for more information.)
- An exception has been added to the locomotive horn sounding requirements for locomotives equipped with defective horns that are being moved for repair. (*See* § 222.21(b)(2) for more information.)
- The notification requirements for Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones have been streamlined by expanding the scope of the Notice of Intent requirement and removing the Notice of Detailed Plan requirement. (*See* § 222.43 for more information.)
- These amendments extend the compliance date for the sound level testing of new locomotives until September 18, 2006. (*See* § 229.129(b) for more information.)
- These amendments provide clarification that locomotives used in rapid transit operations on the general railroad system are exempt from the locomotive horn sound level and testing requirements contained in 49 CFR 229.129. (*See* § 229.129 for more information.)

Section-by-Section Analysis

Section 222.1 What is the purpose of this regulation?

This section has not been revised.

Section 222.3 What areas does this regulation cover?

This section has not been revised.

Section 222.5 What railroads does this regulation apply to?

This section has not been revised.

Section 222.7 What is this regulation's effect on State and local laws and ordinances?

In its petition for reconsideration, the Association of American Railroads (AAR) noted that the Final Rule does not specifically address the preemptive effect of the Final Rule on State and local laws that effectively prohibit and/or restrict the sounding of locomotive horns for testing purposes. Asserting that the Final Rule should preempt such State and local laws, the AAR requested confirmation of FRA's position on this issue.

FRA does not intend to preempt State and local noise ordinances that may have the effect of restricting the time period during which the locomotive horn may be sounded at locations other than grade crossings. FRA was directed to issue regulations that govern the sounding of locomotive horns at public highway-rail grade crossings, provided the interests of communities with pre-existing restrictions on locomotive horn sounding were taken into consideration. Given the nature of this statutory directive, FRA is reluctant to disturb longstanding State and local noise ordinances that may restrict locomotive horn sounding at locations other than grade crossing locations without additional information on the adverse impact of these ordinances on the ability of locomotive manufacturers and railroads to conduct locomotive horn testing in accordance with § 229.129 of this part.

Paragraph (b) of this section has been revised to reflect FRA's intent to refrain from preempting any State law, rule, regulation, or order governing the sounding of locomotive audible warning devices, including the locomotive horn, at any highway-rail grade crossing described in § 222.3(c) of this part. Without this revision, FRA might have inadvertently preempted State law by requiring the sounding of the locomotive bell, at the highway-rail grade crossings described in § 222.3(c) of this part, in accordance with this part.

Paragraphs (c), (d), and (e) of this section have not been revised.

Section 222.9 Definitions

FRA is making a minor revision to the definition of ''*channelization device*'' in the Final Rule. FRA revised this definition in the Final Rule to prohibit the use of surface-mounted tubular markers and vertical panels within quiet zones as SSMs, where the surface-mounted tubular markers or vertical panels are not used in conjunction with a raised longitudinal channelizer. FRA did not, however, intend to prohibit the use of surface-mounted tubular markers or vertical panels, in conjunction with a raised longitudinal channelizer. FRA recognizes that the use of surface-mounted tubular markers and vertical panels, in conjunction with a raised longitudinal channelizer, can effectively reduce quiet zone risk.

FRA is also correcting an inadvertent error in the preamble discussion of the definition of ''*channelization device*'' in the Final Rule. In that discussion, FRA stated that ''it would be highly advisable to use raised longitudinal channelizers that are at least four inches high.'' (See 70 FR 21854.) However, in its petition for reconsideration, Qwick Kurb, Inc. (''Qwick Kurb'') noted that FRA partially relied upon the results of state-sponsored tests on the efficacy of Qwick Kurb installations, which consist of three and one-half inch high longitudinal channelizers with vertical elliptical markers attached, when determining that Qwick Kurb installations had an effectiveness rating of at least .75. Qwick Kurb also noted that Qwick Kurb installations were successfully tested by the Federal Highway Administration (FHWA) under FHWA's NCHRP 350 criteria as a crashworthy traffic control device.

FRA notes that the regulatory text itself does not require use of raised longitudinal channelizers that are at least four inches high. Indeed, FRA never intended to discourage the use of raised longitudinal channelizers that are at least three and one-half inches high. Even though Qwick Kurb subsequently withdrew its objection to the preamble discussion of the definition of ''*channelization device*'' in the Final Rule, FRA recognizes that there may be some communities that have already purchased and installed raised longitudinal channelizers that are three and one-half inches in height. Therefore, FRA is clarifying that raised longitudinal channelizers of at least three and one-half inches in height, when affixed with vertical panels or tubular delineators, constitute acceptable channelization devices for

purposes of this part. Lastly, FRA is removing all references to specific MUTCD sections from the definition of ''*channelization device*'', in recognition of the somewhat transitory nature of MUTCD section citations.

A definition of ''*locomotive audible warning device*'' has been added to the Final Rule, in recognition of the expanded scope of the Final Rule with respect to the sounding of locomotive audible warning devices , as opposed to just locomotive horns, at public, private and pedestrian grade crossings.

The definition of ''*locomotive horn*'' has been revised by adding a specific reference to locomotive horns used in rapid transit operations.

The definition of ''*MUTCD*'' has been revised to correct an inadvertent typographical error.

The definition of ''*New Partial Quiet Zone*'' has been revised to correct an inadvertent typographical error.

The definition of ''*pedestrian grade crossing*'' has been revised in order to clarify that the requirements for pedestrian crossings contained within this part only apply to pedestrian grade crossings. Nonetheless, despite the limited scope of these requirements, the terms ''*pedestrian crossing*'' and ''*pedestrian grade crossing*'' have been used interchangeably for purposes of this part.

The definition of ''*private highway-rail grade crossing*'' has been revised to correct an inadvertent typographical error.

Even though the definition of ''*Pre-Rule Quiet Zone*'' has not been revised, FRA is providing further clarification on the definition of this term. While reviewing Notices of Quiet Zone Continuation that have been submitted by public authorities seeking to continue locomotive horn restrictions in Pre-Rule Quiet Zones, it has come to FRA's attention that disagreements have arisen between public authorities and railroads on whether local ordinances that seem to prohibit locomotive horn sounding at certain highway-rail grade crossings have, in fact, been ''*enforced or observed*''. In these situations, the public authority and railroad must determine whether locomotive horns were routinely sounded at the grade crossings in question on October 9, 1996 and December 18, 2003, despite locomotive horn sounding restrictions that were ostensibly imposed by State or local law. Railroad timetables that reflect locomotive horn sounding practices on October 9, 1996 and December 18, 2003 will provide dispositive proof on this issue.

Even though the definition of ''*quiet zone*'' has not been revised, FRA is providing further clarification on the definition of this term. A quiet zone may only contain consecutive public highway-rail grade crossings located on a segment of a rail line. Therefore, a public authority may find it necessary to establish more than one quiet zone within the boundaries of a local community. For example, if there are two railroad tracks running through a local community that are not adjacent to each other and which do not share grade crossing warning system devices, a community that wishes to silence the locomotive horn at grade crossings along both tracks must create separate quiet zones for each railroad track or right-of-way. Also, if there is both a main line track and an industrial spur track within town limits, a community that wishes to silence the locomotive horn at grade crossings located on both tracks must create separate quiet zones for the main line track and the industrial spur track, unless the main line track and the industrial spur track share grade crossing warning system devices.

Section 222.11 What are the penalties for failure to comply with this regulation?

This section has not been revised.

Section 222.13 Who is responsible for compliance?

This section has not been revised.

Section 222.15 How does one obtain a waiver of a provision of this regulation?

This section has not been revised.

Section 222.17 How can a State agency become a recognized State agency?

This section has not been revised.

Section 222.21 When must a locomotive horn be used?

This section has been revised in order to address the movement of locomotives with inoperative horns, extend the compliance date of paragraph (b) of this section by 120 days, provide a good-faith exception for locomotive engineers who sound the locomotive horn for more than 20 seconds when approaching public crossings, address the sounding of locomotive audible warning devices at public highway-rail grade crossings when required by State and local law and provide a limited exception to the minimum audible warning requirement for trains and locomotives that have stopped in close proximity to a public highway-rail grade crossing.

Paragraph (a) of this section requires locomotive engineers to initiate locomotive horn sounding, in accordance with paragraph (b) of this section, and to continue sounding the locomotive horn until the lead locomotive blocks access to the crossing from all roadway approaches. FRA received a petition for reconsideration on this issue from James Adams, a resident of Placentia, California, who suggested that FRA require the locomotive engineer to sound only those locomotive horns which point in the direction of locomotive travel, in order to reduce unnecessary horn noise impacts from the sounding of locomotive horns that are pointed against the direction of travel. Most locomotive horns, particularly in freight service, are designed to provide warning in both directions of travel; and the engineer has no ability to select warning only in the forward direction. FRA will, however, continue research into more selective and effective means of providing audible warnings and may make further proposals in subsequent proceedings.

Minor typographical revisions have been made in paragraph (a) of this section. Paragraph (b) of this section has been revised to provide an exception to the locomotive horn sounding requirements for locomotive engineers who discover that the locomotive horn on the lead locomotive has failed enroute. Should this situation occur, the locomotive must be moved for repair in accordance with § 229.9 of this chapter. In addition, any movement of the locomotive with the inoperative horn over highway-rail grade crossings must be made in accordance with all applicable railroad operating rules.

Paragraph (b) of this section has also been revised in response to petitions for reconsideration that were submitted by the AAR and the BNSF Railway Company (BNSF), as well as letters that were submitted by the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU), which were submitted in support of certain provisions contained within the AAR's petition for reconsideration.

In the AAR's petition for reconsideration, the AAR asserted that the current compliance date for the locomotive horn sounding requirements set forth in this paragraph would require a rapid transition from State law. The AAR asserted that such a transition would not be in the public interest, as locomotive engineers would be required to comply with time-based audible warning requirements without the benefit of training and/or properly placed whistle posts. Therefore, the AAR requested that FRA postpone the

compliance date of these requirements for one year.

FRA notes that railroads have been aware of the time-based audible warning requirements of this section for some time, as FRA's Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings, which was published on December 18, 2003, contained a 15–20 second audible warning requirement. While FRA is aware of the fact that the AAR objected to the 15–20 second audible warning requirement in its comments on the Interim Final Rule, the 15–20 second audible warning requirement contained within the Final Rule should not have been a complete surprise to the railroad industry. Nonetheless, in the interest of railroad safety, FRA has added paragraph (b)(1) to this section, which delays the compliance date of the time-based audible warning requirement by 120 days from the date of publication of this Notice in order to give railroads additional time within which to adjust whistle posts and/or issue appropriate instructions to train crews. In the interim, railroads must either comply with the locomotive horn sounding requirements that were in effect immediately prior to June 24, 2005 (i.e., State law or, in the absence of State law, railroad operating rules) or this section.

The AAR, BNSF, BLET, and UTU also indicated significant concerns that situations may arise in which engineers are unable to precisely estimate the point at which sounding of the horn should be initiated in order to meet the 15–20 second criterion of the final rule. The AAR, BLET and UTU suggest that a good faith exception be employed where circumstances make it difficult to estimate the time of arrival, citing concerns about liability. This could include cases where whistle boards are placed irregularly (confounding an engineer's attempt to begin a ''countdown'' at a fixed point), where weather conditions make identification of landmarks difficult, where the train is accelerating or braking on approach to the crossing, and under other circumstances.

In sum, AAR's petition appeared to focus on short and long audible warnings, while the BLET and the UTU expressed concern with respect to exceeding the 20-second audible warning requirement. On the other hand, BNSF expressed concern with the time-based nature of the locomotive horn sounding requirement and requested that the locomotive horn continue to be sounded from a fixed point of reference, such as a whistle post.

FRA appreciates these concerns. FRA is also cognizant that previously existing State law requirements, and requirements of railroad operating rules have required distance-based use of the horn for many years, with attendant liability for non-compliance where collisions occur. However, FRA believes that adjustment to a time-based approach can, and should be readily accomplished, since locomotive engineers are required to be familiar with their territory and are accustomed to meeting these kinds of challenges. The time-based approach will allow the railroads to provide effective warning without incurring the animus of local communities associated with sounding the horn for a full quarter-mile when trains are operated a low speed. The time-based approach incorporates the strategy used by the locomotive engineer who ''took mercy'' on the community by exercising discretion, when operating a slow-moving train, to delay the onset of horn sounding at grade crossings.

FRA believes that it is important that sufficient warning be provided to the motorist who needs time to recognize the audible signal, understand its message, initiate a reaction, and take appropriate action when approaching the crossing. Other standards for other active warning at highway-rail crossings call for at least 20 seconds of advance warning (*see* 49 CFR 234.225), and it is typical for basic signal arrangements to provide 30 seconds' warning or more. At crossings equipped with active warning devices, the locomotive horn generally provides a last-minute, additional warning to the motorist of the impending arrival of a train. Thus, it appears quite necessary and appropriate to retain the minimum 15-second warning requirement, given the need for uniformity and the wide range of conditions on the roadway approach to highway-rail crossings (including road speeds as high as 55 miles per hour).

Nevertheless, FRA agrees that employees should err on the side of safety when there is any uncertainty. In a case where situational awareness is partially compromised, an employee should not hesitate to begin a horn sounding sequence because of fear that excessive warning might be provided. Accordingly, former paragraph (b)(1), which has been renumbered as paragraph (b)(2) of this section, has been amended to state explicitly that exceeding the maximum warning time up to a limit of 25 seconds will not constitute a violation of this section if the action is taken in good faith. This is intended to affirm the action of an employee who errs on the side of safety in a particular instance, and not to condone the actions of an engineer who willfully disregards the 20-second limitation for normal operations. FRA will also utilize enforcement discretion for cases in excess of 25 seconds where unusual circumstances provide a justification.

Former paragraph (b)(2), which has been renumbered as paragraph (b)(3) of this section, has also been revised in order to correct a typographical error. Trains, locomotive consists (two or more locomotives traveling together without any train cars attached), and individual locomotives traveling at speeds in excess of 60 mph are prohibited from providing an advance warning more than one-quarter mile in advance of public grade crossings, even if this means that high-speed trains, locomotive consists, and individual locomotives cannot provide an advance warning of at least 15 seconds in duration.

Paragraph (c) of this section has not been revised.

Paragraph (d) has been added to this section to address locomotive horn sounding when a train, locomotive consist, or individual locomotive has stopped in close proximity to a public highway-rail grade crossing. Trains and locomotives may stop in close proximity to public grade crossings during switching and/or commuter rail operations, especially when passenger stations are located in close proximity to public highway-rail grade crossings. In light of the low train speed associated with initiating train or locomotive movement from a complete stop, as well as FRA's intent to minimize local noise impacts where feasible, paragraph (d) will allow the locomotive engineer to sound the locomotive horn for less than 15 seconds before entering a public highway-rail grade crossing, when initiating movement from a complete stop in the close proximity of a public highway-rail grade crossing. Even though passenger stations located adjacent to public highway-rail grade crossings were the impetus for this revision, FRA notes that this limited exception may apply in other situations where trains have stopped in close proximity to public highway-rail grade crossings.

FRA is refraining from providing an exact distance that would constitute ''close proximity'' as the length of time that it will take for a train to reach the crossing will vary greatly depending on the type and weight of the train. If a train is stopped at a location such that it will take less than fifteen seconds for it to occupy the crossing, it is deemed to be in close proximity.

Paragraph (e) has also been added to this section, in response to a petition for reconsideration submitted by the AAR, in which the AAR requested that 49 CFR Part 222 be revised to preempt State laws that govern the sounding of all locomotive audible warning devices at public highway-rail grade crossings. Without such preemption, the AAR asserted that railroads would be required to initiate locomotive bell sounding at a location specified by State law, which may be inconsistent with the time-based locomotive horn sounding requirement set forth in this section.

FRA is not exercising complete preemption of State laws on the sounding of locomotive audible warning devices at public highway-rail grade crossings. Complete preemption of State laws on this issue could inadvertently remove the valuable warning currently provided by locomotive audible warning devices other than the locomotive horn because the Final Rule does not require the sounding of locomotive audible warning devices, other than the locomotive horn, at public highway-rail grade crossings.

FRA has, however, added this section to ensure that a consistent locomotive audible warning will be provided at public highway-rail grade crossings. Therefore, if State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device must be sounded in accordance with paragraphs (b) and (d) of this section. By exercising preemption in this limited manner, FRA hopes to alleviate any potential confusion on the part of the locomotive engineer who might otherwise have been forced to comply with distance-based locomotive bell sounding requirements, as well as time-based locomotive horn sounding requirements, at the same public highway-rail grade crossing.

Section 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

Paragraph (a) of this section has not been revised.

Paragraph (b) of this section has been revised to correct an inadvertent omission from the list of situations in which locomotive horn use at quiet zone crossings would be permissible. In the Final Rule, FRA stated that locomotive horn use would be permitted at a quiet zone crossing equipped with a wayside horn, in the event of a wayside horn malfunction. Similarly, the Final Rule states that locomotive horn use would be permitted at a quiet zone crossing when active grade crossing warning devices installed at the grade crossing are malfunctioning or out of service. As indicated by this list of potential scenarios, FRA has always intended to permit railroads to sound the locomotive horn at a quiet zone crossing whenever engineering improvements installed at the grade crossing become non-compliant. Therefore, FRA has added paragraph (b)(4) to this section to clarify that railroads are not required to comply with the general prohibition against routine locomotive horn sounding at a quiet zone crossing, when an SSM, modified SSM or engineering SSM installed at the quiet zone crossing fails to comply with the requirements set forth in appendix A of this part or the conditions contained within the Associate Administrator's decision to approve the quiet zone in accordance with section 222.39(b) of this part. The railroad should, however, attempt to contact the person responsible for monitoring quiet zone compliance with this part (as designated in the Notice of Quiet Zone Establishment), in order to inform the public authority of the non-compliant condition of the quiet zone crossing.

Paragraph (c) of this section has not been revised.

Section 222.25 How does this rule affect private highway-rail grade crossings?

This section has been revised in response to the AAR petition for reconsideration. In its petition for reconsideration, the AAR expressed support for FRA's decision to refrain from requiring locomotive horn sounding at every private highway-rail grade crossing. However, noting that some States require the sounding of a locomotive horn or the ringing of the locomotive bell at private highway-rail grade crossings, the AAR requested that FRA amend 49 CFR Part 222 by adding an explicit statement of FRA's intent to preempt State law, to the extent that State law requires the sounding of a locomotive audible warning device for a period of time or in a pattern different from the locomotive horn sounding requirements set forth in § 222.21 of this part. After considering this request, as well as the potential for confusion that may result from requiring the locomotive engineer to provide a different audible warning at public highway-rail grade crossings than at private highway-rail grade crossings, FRA revised this section. Thus, if State law requires the sounding of locomotive audible warning devices at private highway-rail grade crossings, the locomotive audible warning device must be sounded in accordance with the locomotive horn sounding requirements set forth in § 222.21 of this part as of December 15, 2006. However, in recognition of the fact that some locomotive audible warning devices (such as the locomotive bell) cannot be sounded in accordance with the locomotive horn sounding pattern required by § 222.21(a) of this part (*i.e.*, two long blasts, one short blast, and one long blast), locomotive audible warning devices other than the locomotive horn need only be sounded in accordance with the time-based locomotive horn sounding requirements set forth in §§ 222.21(b) and (d) of this part.

Paragraph (a) of this section has also been revised, in response to the AAR's petition for reconsideration. In its petition for reconsideration, the AAR asserted that the permissive language in this provision could mislead public authorities into thinking that they are not required to address private highway-rail grade crossings when establishing their quiet zones. After considering this assertion, FRA noted that public authorities located in States that do not require locomotive horn sounding at private highway-rail grade crossings might erroneously assume that it will not be necessary to include and/or improve private highway-rail grade crossings located within the boundaries of their quiet zone. Therefore, FRA revised this paragraph in order to clarify that all private highway-rail grade crossings located within the boundaries of a quiet zone must be treated in accordance with this part.

Paragraph (b)(1) of this section has been revised to clarify that all private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones must be evaluated by a diagnostic team and then equipped or treated in accordance with the diagnostic team recommendations, if the private highway-rail grade crossings allow access to the public or provide access to active industrial or commercial sites. Paragraph (b)(2) of this section has not been revised.

Paragraph (c) of this section has also been revised to clarify that crossbucks and ''STOP'' signs must be installed at each approach to private highway-rail grade crossings that are located within quiet zones.

Section 222.27 How does this rule affect pedestrian grade crossings?

This section has been revised in response to the AAR petition for reconsideration. In its petition for reconsideration, the AAR expressed

support for FRA's decision to refrain from requiring locomotive horn sounding at pedestrian grade crossings. However, after asserting that some States may require the sounding of a locomotive audible warning device at pedestrian grade crossings, the AAR requested that FRA amend 49 CFR Part 222 by adding an explicit statement of FRA's intent to preempt State law, to the extent that State law requires the sounding of a locomotive audible warning device for a period of time or in a pattern different from the locomotive horn sounding requirements set forth in § 222.21 of this part. After considering this request, as well as the potential for confusion that may result from requiring the locomotive engineer to provide a different audible warning at public highway-rail grade crossings than at pedestrian grade crossings, FRA revised this section. Therefore, if State law requires the sounding of a locomotive audible warning device at pedestrian grade crossings, the locomotive audible warning device must be sounded in accordance with the locomotive horn sounding requirements set forth in § 222.21 of this part as of December 15, 2006. However, in recognition of the fact that some locomotive audible warning devices (such as the locomotive bell) cannot be sounded in accordance with the locomotive horn sounding pattern required by § 222.21(a) of this part (*i.e.*, two long blasts, one short blast, and one long blast), locomotive audible warning devices other than the locomotive horn need only be sounded in accordance with the time-based locomotive horn sounding requirements set forth in §§ 222.21(b) and (d) of this part.

Paragraph (a) of this section has also been revised, in response to the AAR's petition for reconsideration. In its petition for reconsideration, the AAR expressed concern that the permissive language contained in paragraph (a) of this section could mislead public authorities into thinking that they are not required to address pedestrian crossings when establishing their quiet zones. After considering this assertion, FRA noted that public authorities located in States that do not require locomotive horn sounding at pedestrian grade crossings might erroneously assume that it will not be necessary to include and/or improve pedestrian grade crossings located within the boundaries of their quiet zone. Therefore, FRA revised this paragraph in order to clarify that all pedestrian grade crossings located within the boundaries of a quiet zone must be treated in accordance with this part.

Paragraph (b) of this section has been revised to clarify that all pedestrian grade crossings that are located in New Quiet Zones or New Partial Quiet Zones must be evaluated by a diagnostic team and then equipped or treated in accordance with the diagnostic team recommendations, if the pedestrian grade crossings allow access to the public or provide access to active industrial or commercial sites.

A minor typographical edit has been made to paragraph (c) of this section.

Paragraph (d) of this section has also been revised in response to the AAR petition for reconsideration. In its petition for reconsideration, the AAR asserted that paragraph (d) of this section requires the installation of signs at pedestrian crossings that could potentially be misleading. In light of the fact that partial quiet zones may be established in States that do not require locomotive horn sounding at pedestrian grade crossings, the AAR expressed concern that pedestrians encountering time-specific warning signs when the partial quiet zone is not in effect might assume that the locomotive horn will be sounded by approaching trains. After considering this issue, FRA agreed that the Final Rule's warning sign requirement could be misleading to pedestrians. Therefore, in order to minimize confusion, paragraphs (d)(2) and (d)(4) of this section have been revised to give public authorities the flexibility to install warning signs which advise pedestrians that train horns will not be sounded, but do not list the hours within which the partial quiet zone will be in effect. Thus, if State law does not require locomotive horn sounding at pedestrian grade crossings, signs that indicate that horns are not sounded would be appropriate. However, if State law requires locomotive horn sounding during non-quiet zone hours, then signs indicating that horns are not sounded between stated hours of the partial quiet zone would be appropriate. Paragraph (d) of this section has also been revised to clarify that advance warning signs must be installed on each approach to pedestrian grade crossings located within quiet zones.

Section 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

This section has not been revised.

Section 222.35 What are the minimum requirements for quiet zones?

Minor typographical revisions have been made throughout this section.

Paragraph (a)(1)(iii) has been added to this section to address the configuration of multiple New Quiet Zones and New Partial Quiet Zones along the same rail line within a single political jurisdiction. Even though FRA has refrained from establishing a minimum distance between neighboring quiet zones, there must be at least one public highway-rail grade crossing between New Quiet Zones and New Partial Quiet Zones located on the same rail line within a single political jurisdiction unless a New Quiet Zone or New Partial Quiet Zone is being added onto an existing quiet zone. While it is perfectly acceptable for a community to create two quiet zones (each at least one-half mile long) with a segment between them at which horns will sound, multiple New Quiet Zones and New Partial Quiet Zones cannot be established on the same rail line within the boundaries of a single political jurisdiction unless they are separated by at least one public highway-rail grade crossing.

By establishing a single New Quiet Zone or New Partial Quiet Zone to incorporate all public highway-rail grade crossings at which routine locomotive horn sounding will be restricted or prohibited, the administrative burden associated with quiet zone establishment will be lessened. In addition, FRA perceives no safety-related rationale for dividing a multiple-crossing New Quiet Zone or New Partial Quiet Zone along a single rail line into fragmented quiet zones. Therefore, unless a New Quiet Zone or New Partial Quiet Zone is being added onto an existing quiet zone, New Quiet Zones and New Partial Quiet Zones created along the same rail line within a single political jurisdiction must be separated by at least one public highway-rail grade crossing.

Paragraph (a)(2)(ii) of this section has been revised to correct an inadvertent restriction on the number of Pre-Rule Quiet Zones that can be combined. Under the revised language in paragraph (a)(2)(ii) of this section, public authorities can combine more than two adjacent Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones.

Paragraph (a)(3) of this section, which states that grade crossings on a segment of rail line that travels through more than one political jurisdiction may be included within a single quiet zone, has been revised. This paragraph has been revised in order to clarify that pedestrian crossings, located on the same segment of rail line as public highway-rail grade crossings, may also be included in multi-jurisdictional quiet zones.

Paragraph (b) of this section has not been revised.

Paragraph (c) of this section has been revised in response to the AAR's petition for reconsideration. In its petition for reconsideration, the AAR asserted that paragraph (c) of this section requires the installation of signs at private highway-rail grade crossings that could potentially be misleading. In light of the fact that partial quiet zones may be established in States that do not require locomotive horn sounding at private highway-rail grade crossings, the AAR expressed concern that motorists encountering time-specific warning signs when the partial quiet zone is not in effect might assume that the locomotive horn will be sounded by approaching trains. After considering this issue, FRA agreed that the Final Rule's warning sign requirement could be misleading to motorists. Therefore, in order to minimize confusion, paragraphs (c)(2) and (c)(4) of this section have been revised to give public authorities the flexibility to install warning signs which advise motorists that train horns will not be sounded, but do not list the hours within which the partial quiet zone will be in effect. Thus, if State law does not require locomotive horn sounding at private highway-rail grade crossings, signs that indicate that horns are not sounded would be appropriate. However, if State law requires locomotive horn sounding during non-quiet zone hours, then signs indicating that horns are not sounded between stated hours of the partial quiet zone would be appropriate. These warning signs must be installed on each approach to public and private highway-rail grade crossings.

Paragraph (c)(5) has been added to this section to clarify that FRA does not intend to require public authorities to install advance warning signs at highway-rail grade crossings that are equipped with wayside horns that conform to the requirements set forth in § 222.59 and Appendix E of this part, but are located within a quiet zone.

Paragraph (d) of this section has not been revised. Minor typographical edits have, however, been made in paragraphs (e), (f), and (g) of this section.

Section 222.37 Who may establish a quiet zone?

Paragraph (a) of this section addresses the situation that may occur if a proposed quiet zone includes public highway-rail grade crossings that are under the authority and control of more than one public authority. This scenario could occur if the proposed quiet zone contains county roads and State highways that intersect the railroad tracks at adjacent crossings. This scenario could also occur if the railroad tracks or the roadway run along the border between two neighboring communities.

When faced with this scenario, paragraph (a) of this section states that both public authorities must agree to establishment of the quiet zone and must jointly, or by delegation, take such actions as are required to comply with this part. Therefore, if two neighboring communities are interested in quiet zone creation, the communities might want to consider working together to create a multi-jurisdictional quiet zone. If the neighboring communities are not, however, interested in creating a single, multi-jurisdictional quiet zone, any shared highway-rail grade crossing (*i.e.*, a highway-rail grade crossing that contains a roadway that runs along the border of the neighboring communities) can only be attributed to one quiet zone. Otherwise, the risk reduction credit associated with any safety improvements at the shared highway-rail grade crossing would be ''double-counted'', if claimed by adjacent quiet zones.

A minor typographical revision has been made to paragraph (a) of this section. However, paragraphs (b) and (c) of this section have not been revised.

Section 222.38 Can a quiet zone be created in the Chicago Region?

This section has not been revised.

Section 222.39 How is a quiet zone established?

Paragraph (a) of this section has not been revised.

Minor typographical revisions have been made to paragraph (b) of this section. In addition, paragraph (b) of this section has been revised in response to the AAR's petition for reconsideration. In its petition, the AAR asserted that it may be unclear, in certain circumstances, as to what constitutes a pedestrian crossing. Therefore, the AAR recommended that the Final Rule be revised to require public authorities to indicate, in their quiet zone applications and notification packages, where pedestrian crossings are located. The AAR reasoned that this revision would eliminate any confusion as to where crossing signs must be located, in accordance with § 222.27.

Even though public authorities are required to identify pedestrian crossings in their quiet zone notification packages, in accordance with the requirements set forth in § 222.43, FRA notes that it had inadvertently failed to require public authorities to identify or provide information on pedestrian grade crossings in their quiet zone applications. Therefore, paragraph (b) of this section has been revised to require public authorities to submit Grade Crossing Inventory Forms for each pedestrian grade crossing located within a proposed quiet zone, as well as information concerning present safety measures and proposed improvements at these crossings. FRA also inadvertently failed to require public authorities to provide information on current and proposed safety improvements at private highway-rail grade crossings. Therefore, paragraph (b) of this section has been revised to require public authorities to submit information on present safety measures and proposed improvements at private highway-rail grade crossings located within the proposed quiet zone. With respect to public highway-rail grade crossings, paragraph (b) of this section has been revised to require public authorities to provide detailed information about all safety improvements, as opposed to just SSMs and ASMs, that have been proposed for implementation. In making these revisions, FRA hopes to obtain better information as to the overall level of safety within the proposed quiet zone.

Paragraph (b)(iv) of this section has been revised by inserting an explicit reference to the Notice of Intent requirement contained within § 222.43 of this part. (An inadvertent omission of the State agency responsible for highway and road safety has also been corrected.) The public authority is required to provide a Notice of Intent, in accordance with § 222.43 of this part, at least 60 days prior to the submission of its quiet zone application. All objections received from any railroad operating within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety in response to the Notice of Intent must then be addressed by the public authority in the quiet zone application, in accordance with paragraph (b)(iv) of this section.

Paragraph (b)(2) of this section addresses the inclusion of newly established public and private highway-rail grade crossings in quiet zones. Any proposed quiet zone that contains a newly established public highway-rail grade crossing must be established through public authority application, unless one or more SSMs will be implemented at every public highway-rail grade crossing within the proposed quiet zone in accordance with paragraph (a)(1) of this section. Quiet zones with newly established public highway-rail grade crossings cannot be established through comparison to

either the Nationwide Significant Risk Threshold or the Risk Index With Horns because the Quiet Zone Risk Index cannot be computed without historical vehicle and rail traffic counts for each public highway-rail grade crossing within the quiet zone.

A minor typographical revision has been made in paragraph (b)(3) of this section. However, paragraph (b)(4) of this section has not been revised. Paragraph (c) of this section has also not been revised.

Section 222.41 How Does This Rule Affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?

Minor typographical revisions have been made in paragraphs (a) and (b) of this section.

Paragraph (c) of this section has been revised in order to clarify the process that must be followed in order to continue existing locomotive horn sounding restrictions within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that will not be established by automatic approval. Paragraph (c)(1) has been added to this section to clarify that the public authority must provide a Notice of Quiet Zone Continuation, in accordance with § 222.43 of this part, in order to retain existing locomotive horn sounding restrictions until June 24, 2008. Paragraph (c)(2) of this section explains the process that must be followed, in order to continue existing locomotive horn sounding restrictions until June 24, 2010. Paragraph (c)(3) of this section explains the process that can be followed, in order to continue existing locomotive horn sounding restrictions until June 24, 2013, by providing a comprehensive State-wide implementation plan and funding commitment for the establishment of Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones.

Paragraph (c)(2) of this section has been revised to clarify the process for continuing existing locomotive horn sounding restrictions beyond June 24, 2008 without interruption. As stated in paragraph (c)(2)(i)(A) of this section, the public authority must mail a Notice of Intent, in accordance with § 222.43 of this part, by February 24, 2008. The mailing of the Notice of Intent, which will provide a brief explanation of the public authority's plans for implementing improvements within the quiet zone, will trigger a 60-day comment period, within which affected railroads, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety can provide comments on the proposed improvements. This Notice of Intent replaces the Notice of Detailed Plan, which was previously required by the Final Rule.

After the Notice of Intent has been mailed and the subsequent 60-day comment period has run, paragraph (c)(2)(i)(B) requires the public authority to file a detailed plan with the FRA Associate Administrator by June 24, 2008. The detailed plan must include a detailed explanation of each safety improvement that will be implemented at public, private, and pedestrian crossings within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, in order to comply with §§ 222.25, 222.27, 222.35 and 222.39 of this part. (The public authority may also choose to explain additional safety improvements that will be implemented within the quiet zone, but are not being relied upon to achieve compliance with this part.) The detailed plan must also include a timetable for the implementation of these safety improvements.

If the public authority plans to implement ASMs within the quiet zone, paragraph (c)(2)(ii) of this section (formerly paragraph (c)(4) of the Final Rule) advises the public authority to apply for FRA approval of the quiet zone by December 24, 2007, in order to ensure that FRA will have ample time within which to review the quiet zone application.

Providing a Notice of Intent and filing a detailed plan in accordance with paragraph (c)(2) of this section will, however, only postpone routine locomotive horn sounding at public highway-rail grade crossings until June 24, 2010, unless the public authority establishes a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone in accordance with paragraph (c)(4) of this section. Paragraph (c)(2)(ii) in the Final Rule, which specifically addressed the establishment of Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones during the three-year period following June 24, 2005, has been removed. However, Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that have Quiet Zone Risk Indices that fall to a level at or below the Nationwide Significant Risk Threshold during this three-year period are now governed by paragraph (c)(4) of this section, which sets forth the procedure for establishing Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by automatic approval.

Paragraph (c)(3) of this section explains the process that must be followed by an appropriate State agency, in order to continue existing locomotive horn sounding restrictions within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones for an additional three years (until June 24, 2013) through the filing of a comprehensive State-wide implementation plan and funding commitment. As stated in this paragraph, existing locomotive horn sounding restrictions may remain in place until June 24, 2013, if: a) a comprehensive State-wide implementation plan and funding commitment is filed by the appropriate State agency with the Associate Administrator by June 24, 2008; and b) safety improvements are initiated within at least one Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone in the State by June 24, 2009. The comprehensive State-wide implementation plan must include an explanation of the process that will be used to assist Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones to come into compliance with §§ 222.25, 222.27, 222.35 and 222.39 of this part, as well as a timetable for the implementation of necessary safety improvements. As of June 24, 2013, locomotive horn sounding will resume unless each public authority establishes a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zones, in accordance with paragraph (c)(4) of this section.

Paragraph (c)(4) of this section explains the process that must be followed in order to establish a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone. As stated in paragraph (c)(4) of this section, a public authority can establish a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone if: (a) The Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone complies with the Pre-Rule Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part; (b) the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone complies with the quiet zone standards set forth in § 222.39 of this part; and (c) the public authority complies with all applicable notification and filing requirements contained within this paragraph (c) and § 222.43 of this part.

The notification and filing requirements contained within this paragraph (c) and § 222.43 of this part may include: a) mailing the Notice of Intent, in accordance with § 222.43 of this part, if new SSMs or ASMs will be implemented within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone; b) filing a detailed plan with the Associate Administrator by June 24, 2008, in accordance with paragraph (c)(2) of this section, if the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone will be established after that date; and c) providing a Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part.

Paragraph (d) of this section has been revised in order to clarify the process that must be followed in order to convert a Pre-Rule Partial Quiet Zone into a 24-hour New Quiet Zone. While the final rule simply stated that the public authority must provide ''notification of the establishment of a New 24-hour Quiet Zone'', paragraph (d) of this section has been revised to clarify that the public authority is actually required to comply with all applicable notification and filing requirements contained within paragraph (c) of this section and § 222.43 of this part. These notification and filing requirements may include: (a) Mailing the Notice of Intent, in accordance with § 222.43 of this part; b) filing a detailed plan with the Associate Administrator by June 24, 2008, in accordance with paragraph (c)(2) of this section, if the Pre-Rule Partial Quiet Zone will be converted after that date; and c) providing a Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part.

Section 222.42 How does this rule affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?

This section has been revised in order to clarify the process that must be followed in order to continue existing locomotive horn sounding restrictions in Intermediate Quiet Zones and Intermediate Partial Quiet Zones until June 24, 2006. This section has also been revised in order to clarify the process that must be followed in order to convert an Intermediate Quiet Zone or Intermediate Partial Quiet Zone into a New Quiet Zone or New Partial Quiet Zone on or before June 24, 2006, in order to prevent the resumption of locomotive horn sounding on that date.

As stated in paragraph (a)(1) of this section, a public authority may continue existing locomotive horn restrictions until June 24, 2006 by providing a Notice of Quiet Zone Continuation in accordance with § 222.43 of this part. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone must, however, be converted into a New Quiet Zone or a New Partial Quiet Zone by June 24, 2006, in order to prevent the resumption of locomotive horn sounding on that date.

Paragraph (a)(2) of this section explains the process for converting an Intermediate Quiet Zone into a New Quiet Zone, or an Intermediate Partial Quiet Zone into a New Partial Quiet Zone, by June 24, 2006. Paragraph (b) of this section explains the process for converting an Intermediate Partial Quiet Zone into a 24-hour New Quiet Zone by June 24, 2006.

While most of the requirements for converting an Intermediate Quiet Zone or Intermediate Partial Quiet Zone remain unchanged, paragraph (a)(2) of this section explains that the public authority is required to: (a) Provide a Notice of Intent, in accordance with § 222.43 of this part; (b) bring the Intermediate Quiet Zone or Intermediate Partial Quiet Zone into compliance with the standards set forth in § 222.39 of this part; (c) bring the Intermediate Quiet Zone or Intermediate Partial Quiet Zone into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part; and d) provide a Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, by June 3, 2006. It should be noted that the Notice of Intent should be mailed prior to April 3, 2006, in order to allow at least 60 days for the submission of comments and/or ''no-comment'' statements from each railroad operating over public highway-rail grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety before the mailing of the Notice of Quiet Zone Establishment. (Please refer to § 222.43(b) for more information.) Even though these notification requirements were contained within § 222.43 of this part and were included in the Paperwork Reduction Act analysis that FRA performed on the Final Rule, FRA inadvertently omitted explicit reference to these requirements in this section of the Final Rule.

Paragraph (b) of this section has been revised in order to clarify the process that must be followed in order to convert an Intermediate Partial Quiet Zone into a 24-hour New Quiet Zone. (Please note that the requirements for converting an Intermediate Partial Quiet Zone into either a 24-hour New Quiet Zone or a New Partial Quiet Zone are identical.) While the Final Rule simply stated that the public authority is required to provide ''notification of New Quiet Zone establishment'', paragraph (b) of this section has been revised to clarify that the public authority is actually required to provide two different types of quiet zone notification—the Notice of Intent and the Notice of Quiet Zone Establishment. In order to facilitate conversion of the Intermediate Partial Quiet Zone before the end of the one-year grace period for existing locomotive horn sounding restrictions, paragraph (b) of this section has also been revised to include a deadline for the submission of the Notice of Quiet Zone Establishment, which mirrors the submission deadline contained within paragraph (a)(2) of this section.

Section 222.43 What notices and other information are required to create or continue a quiet zone?

Minor typographical revisions have been made throughout this section.

This section has also been revised by expanding the scope of the Notice of Intent requirement to include Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will need to implement SSMs or ASMs in order to qualify for quiet zone establishment under § 222.41 (c) or (d) of this part. The requirement to provide Notice of Detailed Plan, which was virtually identical to the Notice of Intent, has therefore been removed. Thus, Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that were previously required to provide a Notice of Detailed Plan are now required to provide a Notice of Intent on or before February 24, 2008.

As stated in paragraph (a)(1) of this section, a Notice of Intent must be provided by public authorities who wish to create a New Quiet Zone or New Partial Quiet Zone by public authority designation or application, in accordance with § 222.39(a) or (b) of this part. This includes public authorities who wish to convert Intermediate Quiet Zones and Intermediate Partial Quiet Zones into a New Quiet Zone or New Partial Quiet Zone. In addition, public authorities seeking to implement new SSMs or ASMs within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are required to provide a Notice of Intent.

The Notice of Intent should be mailed early in the quiet zone development process, as the submission of the Notice of Intent triggers a 60-day comment period and provides State agencies and railroads with an opportunity to provide input on the quiet zone to the public authority. Therefore, paragraph (b)(1) was added to this section to reiterate that a sixty-day period must elapse between the mailing of the Notice of Intent and the mailing of the Notice of Quiet Zone Establishment, unless the public authority has obtained written comments and/or ''no-comment'' statements from each railroad operating over public highway-rail grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section. This provision is very similar to language contained within paragraph (d)(1)(ii) of this section, which

addresses the timing of Notices of Quiet Zone Establishment.

With respect to Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by June 24, 2008, paragraph (b)(1)(ii) of this section reminds public authorities that the Notice of Intent, which provides a brief explanation of proposed quiet zone improvements, must be provided by February 24, 2008, in order to continue existing locomotive horn sounding restrictions beyond June 24, 2008 without interruption.

As for the Notice of Quiet Zone Continuation, it should be noted that submission of the Notice of Quiet Zone Continuation was only necessary if the public authority wanted to continue pre-existing locomotive horn sounding restrictions after June 24, 2005. If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone was established under the authority of this part before the Final Rule took effect on June 24, 2005, the public authority was not required to provide prior Notice of Quiet Zone Continuation.

All Notices of Intent, Notices of Quiet Zone Continuation, and Notices of Quiet Zone Establishment that complied with § 222.43 of the Final Rule and were mailed on or before August 17, 2006, shall be deemed compliant with any revised notification requirements now contained in this section.

Section 222.45 When Is a Railroad Required to Cease Routine Sounding of Locomotive Horns at Crossings?

This section has been revised to clarify the required railroad response to a valid Notice of Quiet Zone Continuation or Establishment. Even though railroads have been required to refrain from, or cease, routine sounding of the locomotive horn at all public, private, and pedestrian crossings identified in a valid Notice of Quiet Zone Continuation or Establishment on the date specified in the Notice, reference to the Notice of Quiet Zone Continuation was inadvertently omitted from this section in the Final Rule. Pedestrian grade crossings were also inadvertently omitted from the description of grade crossings at which railroads are required to cease routine use of the locomotive horn.

Section 222.47 What periodic updates are required?

Minor typographical revisions have been made in this section.

Section 222.49 Who may file Grade Crossing Inventory Forms?

This section has not been revised.

Section 222.51 Under what conditions will quiet zone status be terminated?

This section has not been revised.

Section 222.53 What are the requirements for supplementary and alternative safety measures?

This section has not been revised.

Section 222.55 How are new supplementary or alternative safety measures approved?

This section has not been revised.

Section 222.57 Can parties seek review of the Associate Administrator's actions?

This section has not been revised.

Section 222.59 When May a Wayside Horn Be Used?

It has come to FRA's attention that there may be some confusion in the railroad industry as to whether the notification requirements contained within this section apply to existing wayside horn installations. As a result, we wish to clarify that railroads and/or public authorities who are responsible for wayside horns that became operational before June 24, 2005 and that meet the requirements set forth in this part are not required to submit notification of operational status, in accordance with paragraphs (b) and (c) of this section. Thus, all railroads operating over highway-rail grade crossings equipped with wayside horns that became operational before June 24, 2005 were required to cease routine sounding of the locomotive horn at those crossings on that date, even if notification of operational status was not provided in accordance with this section.

Appendix A to Part 222—Approved Supplementary Safety Measures

Sections (A)(1), (A)(3), (A)(4), and (A)(5) of this Appendix have not been revised. However, FRA has added a brief discussion of the effectiveness rate assigned to four-quadrant gate systems equipped with vehicle presence detection to Section (A)(2) of this Appendix.

As stated in the Note to section (A)(2) of the Appendix, the lower effectiveness rate assigned to four-quadrant gate systems equipped with presence detection does not mean that four-quadrant systems with presence detection are inherently less safe. The lower effectiveness rate merely reflects the fact that motorists who are intent on circumventing the grade crossing warning system can take advantage of presence detection by driving under the delayed exit gates to enter the grade crossing. However, the public authority must weigh this risk against site-specific risks, such as nearby highway intersections that may cause traffic to back up on the grade crossing, when determining which type of four-quadrant gate system should be installed at a specific highway-rail grade crossing. FRA therefore recommends the use of site-specific studies to determine the best application for each installation.

Sections (B) and (C) of this Appendix have not been revised.

Appendix B to Part 222—Alternative Safety Measures

Minor revisions have been made to section I.A. of this appendix, which contains a brief discussion of the requirements and effectiveness rates for modified SSMs. Specifically, section I.A.2 of this appendix has been revised in order to clarify that the public authority is required to provide estimates of the effectiveness of its modified SSMs, which can be based upon adjustments to the effectiveness levels provided in appendix A or actual field data derived from the crossing sites. These effectiveness rate estimates must be included in the quiet zone application, as set forth in § 222.39(b) of this part.

Sections (I)(B) and (I)(C) of this Appendix have not been revised. Sections II and III of this Appendix have also not been revised.

Appendix C to Part 222—Guide to Establishing Quiet Zones

This appendix has been revised to incorporate changes that have made been to the rule text.

Appendix D to Part 222—Determining Risk Levels

This appendix has not been revised.

Appendix E to Part 222—Requirements for Wayside Horns

This appendix has not been revised.

Appendix F to Part 222—Diagnostic Team Considerations

This appendix has not been revised.

Appendix G to Part 222—Schedule of Civil Penalties

This appendix has been revised to reflect the exception for fast-moving trains (trains operating at speeds in excess of 60 mph) from the 15-second minimum horn sounding requirement contained in § 222.21(b) of this part. As stated in § 222.21(b)(3) of this part, FRA will not issue civil penalties against railroads whose fast-moving trains fail to sound the locomotive horn at least 15

seconds prior to their arrival at public highway-rail grade crossings, if locomotive horn sounding was initiated one-quarter mile from the public highway-rail grade crossing.

This appendix has also been revised to reflect revisions that have been made to the audible warning requirement set forth in § 222.21(b) of this part. When dealing with situations in which the locomotive engineer provided an audible warning in excess of 20 seconds before public grade crossings, FRA will try to determine whether the locomotive engineer made a good faith attempt to comply with the 15–20 second audible warning requirement. However, if an audible warning in excess of 25 seconds was provided before a public highway-rail grade crossing and FRA determines that the locomotive engineer failed to make a good faith attempt to comply with the 15–20 second audible warning requirement set forth in § 222.21(b) of this part, FRA may issue an appropriate civil penalty.

Section 222.21(b)(3) of this part prohibits the initiation of locomotive horn sounding from a location more than one-quarter mile before a public highway-rail grade crossing. However, under the civil penalty schedule contained within Appendix G to the Final Rule, a $5,000 civil penalty could only have been assessed if locomotive horn sounding was routinely initiated from a location more than one-quarter mile before a public highway-rail grade crossing. FRA did not intend to restrict its enforcement activity to habitual violations of the locomotive horn sounding requirements contained within this part. Therefore, FRA is amending this appendix in order to clarify that civil penalties may be assessed against railroads for individual instances in which locomotive horn sounding was initiated from a location more than one-quarter mile before a public highway-rail grade crossing. However, the recommended standard civil penalty has been reduced from $5,000 to $1,000 and the recommended willful civil penalty has also been reduced from $7,500 to $2,000.

This appendix has also been revised to clarify that routine sounding of the locomotive horn at any grade crossing (i.e., public, private or pedestrian grade crossing) located within a quiet zone is prohibited.

Section 229.5 Definitions

The three definitions that are being added this section were included in the Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings. These definitions were, however, inadvertently removed upon issuance of the Final Rule on Locomotive Event Recorders (70 FR 37920).

Also, the definition of the term ''defective'' has been revised to reflect FRA's intent to limit application of this specific definition to § 229.129 of this part.

Section 229.129 Locomotive Horn

The title of this section has been changed to reflect the fact that the requirements contained within this section only pertain to one type of locomotive audible warning device—the locomotive horn. Therefore, all references to ''audible warning devices'' within this section have been replaced with the term ''locomotive horn'.

This section has also been revised in response to petitions for reconsideration that were submitted by GE Transportation Rail and the AAR. In its petition for reconsideration, GE Transportation Rail requested a 120-day extension of the compliance deadline set forth in paragraph (b)(1) of this section for the sound level testing of new locomotives. GE Transportation Rail asserted that, given the relatively short period of time since the issuance of FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings, it would be unable to complete sound level testing on its first batch of new locomotives prior to June 24, 2005 (the compliance deadline for sound level testing of new locomotives). As a result, GE Transportation Rail asserted that it would be forced to test every new locomotive, which would negatively impact its ability to meet delivery commitments made to its customers.

After considering the assertions made by GE Transportation Rail with respect to the practical limitations associated with testing new locomotive sound levels, in accordance with the test parameters set forth in § 229.129, FRA revised paragraph (b) to extend the compliance date of the new locomotive sound level testing requirements to September 18, 2006. In light of the delay incidental to the publication of these amendments, this revision will actually extend the compliance date of the testing requirements contained in this section by more than 120 days. Therefore, any locomotives built on or after September 18, 2006 must comply with the minimum and maximum locomotive horn sound level requirements set forth in paragraph (a) of this section. However, locomotives built before September 18, 2006 must be tested and brought into compliance with the minimum and maximum locomotive horn sound level requirements set forth in paragraph (a) of this section by June 24, 2010.

Paragraph (b)(3) of this section has been revised to clarify FRA's original intent to require the sound level testing of remanufactured locomotives, in accordance with this section. Even though the Final Rule required sound level testing of ''each locomotive when rebuilt, as determined pursuant to 49 CFR 232.5'', FRA has received comments noting that this provision is somewhat ambiguous and difficult to interpret. Since FRA had actually intended to apply the sound level testing requirements contained within this section to those locomotives that have been rebuilt or refurbished from a previously used or refurbished underframe (''deck'') and contain fewer than 25 percent of previously used components (weighted by the dollar value of the components), paragraph (b)(3) of this section has been revised to refer only to those locomotives that meet the definition of ''remanufactured locomotive'', as set forth in § 229.5 of this part. (Please refer to FRA's Final Rule on Locomotive Crashworthiness, which was published in the **Federal Register** on June 28, 2006 (71 FR 36888), for further discussion of the term ''remanufactured locomotive''.)

The AAR also submitted a petition for reconsideration that addressed a number of provisions contained within § 229.129 of this part. First, the AAR asserted that § 229.129 of this part was ambiguous as to what additional testing, if any, must be conducted when locomotive horns are replaced. If additional testing would be necessary, the AAR proposed that railroads be allowed to use the sampling scheme set forth in paragraph (b)(1) of this section to qualify replacement horns, with no additional testing necessary. However, if a replacement horn was not model qualified through acceptance sampling, the AAR proposed that railroads be required to test the replacement horn at the time of the next periodic inspection or by June 24, 2010, whichever is later.

FRA has not, however, revised this section to allow acceptance sampling of replacement horns. Given the level of variation that exists in the different types of locomotive/locomotive horn configurations, FRA is concerned that acceptance sampling would not ensure that the replacement horn, when installed on the locomotive, would generate an audible warning commensurate with the sound level parameters established by paragraph (a) of this section. FRA believes that locomotive horns should not be tested in isolation—the sound level must be tested after the horn has been installed

on the locomotive. FRA notes that there are a variety of factors that can influence locomotive horn sound levels, such as the placement, mounting, air pressure and actual condition of the locomotive horn. However, should railroads develop data from field testing to demonstrate that some form of acceptance sampling would be appropriate, FRA would be willing to reconsider its position on this issue.

Paragraph (b)(4) has been added to this section to require sound level testing of locomotives equipped with replacement horns, in accordance with paragraph (c) of this section. As stated in paragraph (b)(4) of this section, locomotives equipped with replacement horns must be tested unless: (a) The locomotive has already been individually tested or tested through acceptance sampling, in accordance with paragraphs (b)(1), (b)(2), or (b)(3) of this section; (b) the replacement horn is the same locomotive horn model as the locomotive horn that was replaced; and (c) the replacement horn was mounted in the same manner and location as the locomotive horn that was replaced. This sound level testing must be performed before the next two annual tests required by § 229.27 of this part are completed.

In its petition for reconsideration, the AAR also requested that railroads be allowed to use acceptance sampling to qualify the sound level output of existing locomotives. In support of this request, the AAR asserted that there is a great deal of standardization with respect to locomotive horn and locomotive models. However, FRA has not revised this section to allow acceptance sampling of the sound level output of existing locomotives, as the considerations that militate against acceptance sampling of replacement locomotive horns apply equally, if not more so, to the acceptance sampling of existing locomotives. FRA notes that there are many factors that can influence the sound level output of existing locomotives, including the actual condition of the locomotive horn, as well as the placement, mounting and air pressure of the locomotive horn. FRA may, however, reconsider this issue, should railroads develop data from field testing that demonstrates that some form of acceptance sampling would be appropriate.

Paragraph (c)(1) of this section has not been revised.

By e-mail dated September 20, 2005, the AAR submitted a request for modification of the locomotive horn testing requirements in paragraph (c)(2) of this section. In its e-mail, the AAR requested permission to use electronic calibrators, in addition to approved acoustic calibrators, to conduct compliance testing in accordance with this section. If such a change were made, the AAR asserted that railroads could use an acoustic calibrator during the initial setup of an ''environmental noise monitoring system'' and then store the results in an electronic calibrator which could, conceivably, have an accuracy of ± 0.1 dB.

FRA has not, however, revised paragraph (c)(2) of this section. Acoustical calibration has been incorporated into the recommended practice for monitoring aircraft noise in the vicinity of airports, unlike electronic calibration, which is mainly used to identify sound level measurement system failure. *See* SAE Aerospace Recommended Practice (ARP) 4721—Monitoring Aircraft Noise and Operations in the Vicinity of Airports and ISO/DIS 20906—Unattended Monitoring of Aircraft Sound in the Vicinity of Airports. Thus, while FRA will permit the use of environmental noise monitoring systems to conduct compliance testing under this section, FRA cannot permit electronic calibration of sound level measurement systems.

Apart from the correction of a typographical error in paragraph (c)(5), paragraphs (c)(3) through (c)(8) of this section have not been revised.

In its e-mail dated September 20, 2005, the AAR also requested that FRA relax the requirement in paragraph (c)(9) of this section that calibration be done before and after each compliance test. However, FRA would like to clarify that calibration is not required before and after each compliance test. Acoustical calibration must be performed, at a minimum, before and after each session of compliance tests within an 8-hour period, unless a physical change in the environment (such as a drop or rise in temperature, atmospheric pressure or wind) or damage to the instrument may cause changes in microphone response. Therefore, paragraph (c)(9) of this section has not been revised.

In its petition for reconsideration, the AAR asserted that the requirement to record air flow measurements when testing locomotive sound levels would not only be extremely burdensome, but would fail to provide any useful information. Noting that § 229.129 does not contain any regulatory requirement pertinent to air flow, the AAR stated that no regulatory purpose would be served by recording air flow measurements. In addition, the AAR asserted that railroads would need to employ extra personnel and/or utilize specialized equipment during locomotive sound level testing, for the sole purpose of reading the air flow meter.

After considering these assertions, FRA revised paragraph (c)(10) of this section by removing the requirement to retain written records of air flow measurements taken during locomotive sound level testing. FRA was persuaded that this requirement would impose an unnecessary burden on railroads and locomotive manufacturers.

Lastly, the AAR objected to the written signature requirement contained within paragraph (c)(10) of this section. Noting that the Interim Final Rule did not provide any rationale for requiring the signature of the person who performs the locomotive horn sound level test, the AAR expressed concern that railroads would be unable to use a fully automated test procedure under consideration which would record and send sound level test results to a database without any human intervention. Nonetheless, if signatures will be required, the AAR asserted that FRA will have to allow railroads to use electronic signatures, in accordance with the Government Paperwork Elimination Act.

While FRA recognizes the paperwork burdens associated with an additional recordkeeping requirement, FRA notes that the written signature of the person who performs the locomotive sound level test will provide accountability, should questions arise as to the quality of the test that was performed. However, FRA acknowledges that an electronic recordkeeping system could be designed to provide an equivalent level of accountability, while reducing associated paperwork burdens. Therefore, even though FRA has not revised paragraph (c)(10) of this section to remove the written signature requirements, FRA looks forward to the implementation of electronic recordkeeping in the near future, at which time FRA intends to review all of the recordkeeping requirements contained within 49 CFR Part 229.

Paragraph (d) of this section has not been revised. However, in light of the confusion generated by the preamble discussion of this section in the Final Rule, FRA would like to clarify the intent of this section.

Contrary to the discussion of this section in the preamble to the Final Rule, rapid transit operations that share track with general system railroads are not subject to this section. (This category of rapid transit operations includes ''light rail'' vehicles that are operated on general system track pursuant to an FRA-approved Temporal Separation Plan.) Thus, rapid transit

operations that share track with general system railroads need not file waiver petitions to obtain relief from the locomotive horn volume and testing requirements contained in this section.

It should, however, be noted that rapid transit operations that share track with general system railroads remain subject to the locomotive horn sounding requirements contained in 49 CFR Part 222, absent relief granted in the form of an FRA waiver. Thus, rapid transit operations that share track with general system railroads are required to sound the locomotive horn when approaching and entering public highway-rail grade crossings located outside quiet zones. However, these rapid transit operations need not comply with the minimum and maximum locomotive horn sound level requirements contained in this section, nor do they need to conduct locomotive horn testing in accordance with this section.

Rapid transit operations that operate within a common corridor with general system railroads and traverse shared public highway-rail grade crossings are also exempt from the requirements contained in this section. However, these rapid transit operations remain subject to the locomotive horn sounding requirements contained in 49 CFR Part 222, absent relief granted in the form of an FRA waiver.

Therefore, rapid transit operations that operate within a common corridor with general system railroads are required to sound the locomotive horn when approaching and entering public highway-rail grade crossings that are shared with general system railroads and located outside quiet zones. However, these rapid transit operations need not comply with the minimum and maximum locomotive horn sound level requirements contained in this section, nor do they need to conduct locomotive horn testing in accordance with this section.

Appendix B to Part 229—Schedule of Civil Penalties

This appendix has been revised to reflect changes that have been made to section 229.129 of this part, which clarify that the sound level and testing requirements contained within section 229.129 of this part only pertain to one type of locomotive audible warning device—the locomotive horn. In addition to other minor clarifying revisions, this appendix has also been revised by assigning a civil penalty recommendation to the failure of a railroad or locomotive manufacturer to complete and/or retain a proper locomotive horn sound level test record in accordance with section 229.129(c)(10) of this part.

5. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This revised Final Rule has been evaluated in accordance with existing policies and procedures and is considered to be significant under both Executive Order 12866 and DOT policies and procedures. FRA has prepared and placed in the docket a regulatory evaluation of the rule. Following is a summary of the findings.

FRA identified 1,598 existing whistle ban or no-horn crossings that would qualify for inclusion in Pre-Rule Quiet Zones. FRA also identified 372 potential New Quiet Zone crossings and 71 potential Intermediate Quiet Zone crossings. Using information available about the crossing characteristics and the number of persons that would be or currently are severely affected by the sounding of train horns, FRA estimated the costs and benefits of the actions that communities would take in response to this revised Final Rule. FRA believes that many communities will take advantage of the many options available to establish quiet zones. FRA also estimated the costs associated with the revised horn sound level testing requirements.

After the release of the Final Rule, FRA received petitions for reconsideration on various issues of concern to the railroads, railroad suppliers, and other affected entities. After careful consideration, FRA is revising the Final Rule to address some of the issues raised in the petitions for reconsideration. FRA is also taking the opportunity to clean up the rule by correcting a few inadvertent errors and omissions which are necessary for the rule to function as intended. These revisions to the Final Rule will result in approximately $184,873 in additional costs. These additional costs are reflected in the cost table below. For a complete discussion of the costs of the revisions, please see the *Economic and Regulatory Flexibility Analyses of the Revisions to the Final Rule.*

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the Final Rule revisions using a 7 percent discount rate.

TOTAL TWENTY-YEAR COSTS (PV, 7%) [1]

Extension of Compliance Date for Sound Level Testing of New Locomotives	$34,203
Notice and Comment Requirements	$150,670
Total Twenty-Year Costs associated with implementation of the Final Rule revisions are estimated to total	*$184,873

[1] Present Value (PV) provides a way of converting future benefits and costs into equivalent dollars today so that benefit and cost streams that involve different time paths may be compared. The formula used to calculate these flows is: $1/(1+I)^t$ where ''I'' is the discount rate, and ''t'' is the year. Per guidance from the Office of Management and Budget, a discount rate of .07 is used in this analysis.

*(PV, 20 Years, 7%).

FRA extended the compliance deadline for the sound level testing of new locomotives at the request of a major locomotive manufacturer, who was not prepared to meet the original compliance deadline without major disruption. This extension of the compliance deadline has, however, resulted in $34,203 in additional costs. FRA believes that this small additional cost is justified by the benefit (not quantified) of avoiding either substantial non-compliance or disruptions to the manufacturing process.

The remaining additional costs are associated with the notice and comment provisions of the Final Rule. These provisions have been revised, in order to streamline the quiet zone notification process and facilitate communication between interested parties prior to the expenditure of significant funds for projects such as crossing safety improvements. Even though we do not have the information necessary to estimate the amount of ''waste'' which may be avoided through early disclosure of planned crossing safety improvements, FRA believes that this small increase in total cost will prevent additional cost outlays associated with potential problems arising from projects requiring a substantial investment for needed safety improvements.

The direct safety benefit of this revised Final Rule is the reduction in casualties that result from collisions between trains and highway users at

public at-grade highway-rail crossings. Implementation of this rule will ensure that (1) locomotive horns are sounded to warn highway users of approaching trains; or (2) rail corridors where train horns do not sound will have a level of risk that is no higher than the average risk level at gated crossings nationwide where locomotive horns are sounded regularly; or (3) the effectiveness of horns is compensated for in rail corridors where train horns do not sound.

Some of the unquantified benefits of this revised Final Rule include reductions in freight and passenger train delays, both of which can be very significant when grade crossing collisions occur, and collision investigation efforts. Although these benefits are not quantified in this analysis, their monetary value is significant.

Maximum horn sound level requirements will limit community disruption by not allowing horns to be sounded any louder than necessary to provide motorists with adequate warning of a train's approach. The benefit in noise reduction due to this change in maximum horn loudness is not readily quantifiable.

Another unquantified benefit of this rule is elimination of some locomotive horn noise disruption to some railroad employees and those who may reside near industrial areas served by railroads. Locomotive horns do not have to be sounded at individual highway-rail grade crossings at which the maximum authorized operating speed for that segment of track is 15 miles per hour or less and properly equipped flaggers (as defined in by 49 CFR 234.5, but who for purposes of this rule can also be crew members) provide warning to motorists. This rule will allow engineers, who were probably already exercising some level of discretion as to the duration and sound level of locomotive horn sounding, to stop sounding the horn under these circumstances at no additional cost. In addition, under the Final Rule revisions, locomotive horns need not be sounded for a minimum of 15 seconds by trains that re-initiate movement from locations, such as passenger stations, that are in close proximity to public highway-rail grade crossings, provided certain specified conditions are met.

The Final Rule revisions will also facilitate railroad compliance with required time-based locomotive horn sounding. By extending the compliance deadline for time-based locomotive horn sounding, FRA will ensure that locomotive engineers have sufficient time to adapt to time-based locomotive horn sounding. In addition, by expanding the scope of these time-based audible warning requirements to cover audible warnings provided at public, private and pedestrian crossings, locomotive engineers will no longer be required to comply with potentially inconsistent State and Federal requirements governing locomotive-based audible warnings at grade crossings. Improved railroad compliance is not, however, readily quantifiable.

This analysis does not quantify the benefit of eliminating community disruption caused by the sounding of train horns, nor does it quantify costs from increased noise at crossings where horns will sound where they were previously silent. FRA is, however, confident that the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society by this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Data available to FRA indicates that this rule may have minimal economic impact on a substantial number of small entities (railroads) and possibly a significant economic impact on a few small entities (government jurisdictions and small businesses). However, there is no indication that this rule will have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) did not submit comments to the docket for this rulemaking in response to the Initial Regulatory Flexibility Assessment that accompanied the NPRM or the Regulatory Flexibility Assessment that accompanied the Interim Final Rule. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FRA has performed a Final Regulatory Flexibility Assessment (FRFA) on small entities that potentially can be affected by this revised Final Rule. The FRFA is summarized in this preamble as required by the Regulatory Flexibility Act. The full FRFA is included in the Regulatory Evaluation, which is available in the public docket of this proceeding.

This is essentially a safety rule that implements as well as minimizes the potential negative impacts of a Congressional mandate to blow train whistles and horns at all public crossings. Some communities believe that the sounding of train whistles at every crossing is excessive and an infringement on community quality of life, and therefore have enacted ''whistle bans'' that prevent the trains from sounding their whistles entirely, or during particular times (usually at night). Some communities would like to establish ''quiet zones'' where train horns would not be routinely sounded and have been awaiting issuance of this rule to do so. FRA is concerned that with the increased risk at grade crossings where train whistles are not sounded, or another means of warning utilized, collisions and casualties may increase significantly. The rule contains low risk based provisions for communities to establish quiet zones. Some crossing corridors may already be at risk levels that are permissible under this rule and would not need to reduce risk levels any further to establish quiet zones. Otherwise, communities establishing Pre-Rule Quiet Zones may implement sufficient safety measures along whistle-ban corridors to reduce risk to permissible levels. In addition to having permissible risk levels, all crossings in New Quiet Zones will have to be equipped with gates and flashing lights. If a community elects to simply follow the mandate, horn sounding will resume and there will be a noise impact on small businesses that exist along crossings where horns are not currently routinely sounded. If a community elects to implement sufficient safety measures to comply with the requirements for establishing a quiet zone, then the governmental jurisdiction will be impacted by the cost of such program or system. To the extent that potential quiet zone crossing corridors already have average risk levels permissible under this rule, and, in the case of New Quiet Zones, every crossing is equipped with gates and flashing lights, communities will only incur administrative costs associated with establishing and maintaining quiet zones.

The costs of implementing this revised Final Rule will predominately be on the governmental jurisdictions of communities some of which are ''small governmental jurisdictions.'' As defined by the SBA this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. The most significant impacts from this rule will be on about 260 governmental jurisdictions whose communities currently have either formal or informal whistle bans in place. FRA estimates

that approximately 70 percent (i.e. 193 communities) of these governmental jurisdictions are considered to be small entities.

FRA has recently published a final policy which establishes ''small entity'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. As defined by 49 CFR 1201.1–1, Class III railroads are those railroads who have annual operating revenues of $20 million per year or less. Hazardous material shippers or contractors that meet this income level will also be considered as small entities. FRA is using this definition of small entity for this rulemaking. FRA believes that approximately 640 small railroads would be minimally impacted by train horn sound level testing requirements contained in this rule. In addition, some small businesses that operate along or nearby rail lines that currently have whistle bans in place that potentially may not after the implementation of this rule, could be moderately impacted. Alternative options for complying with this rule include allowing the train whistle to be blown. This alternative has no direct costs associated with it for the governmental jurisdiction. Other alternatives include ''gates with median barriers'' which are estimated to cost between $13,000 and $15,000 for simple installations; upgrade two-quadrant gate systems to four-quadrant gate systems at an estimated cost of $100,000–$300,000 plus annual maintenance costs of $2,500–$3,000; and ''Photo enforcement'' which is estimated to cost $28,000–$65,500 per crossing, and have annual maintenance costs of $6,600–$24,000 per crossing. Finally, FRA has not limited compliance to the lists provided in appendix A or appendix B of the rule. The rule provides for supplementary safety measures that might be unique or different. For such an alternative, an analysis would have to accompany the option that would demonstrate that the number of motorists that violate the crossing is equivalent or less than that of blowing the whistle. FRA intends to rely on the creativity of communities to formulate solutions which will work for that community.

FRA does not know how many small businesses are located within a distance of the affected highway-rail crossings where the noise from the whistle blowing could be considered to be a nuisance and bad for business. Concerns have been advanced by owners and operators of hotels, motels and some other establishments as a result of numerous town meetings and other outreach sessions in which FRA has participated during development of this rule. If supplementary safety measures are implemented to create a quiet zone then such small entities should not be impacted. FRA held 12 public hearings nationwide following issuance of the NPRM and requested comments to the docket from small businesses that feel they will be adversely impacted by the requirements contained in the NPRM. FRA received no comments in response.

C. Paperwork Reduction Act

The information collection requirements in these amendments to the final rule, which respond to petitions for reconsideration, have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., and have been assigned OMB control no. 2130–0560. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

BILLING CODE 4910–06–P

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Tot. Annual Burden Cost
222.11 - Penalties	340 Public Authorities	5 false reports/rcd	2 hours	10 hours	$400
222.15 - Petitions for Waivers	340 Public Authorities	5 petitions	4 hours	20 hours	$800
222.17 - Applications To Be Recognized as a State Agency	68 State Agencies	7 applications	8 hours	56 hours	$3,416
222.39 - Establishment of Quiet Zones					
- Public Authority Application to FRA	340 Public Authorities	105 Applications	80 hours	8,400 hours	$512,400
- Diagnostic Team Reviews	340 Public Authorities	53 reviews	32 hours	1,696 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Form	340 Public Authorities	302 forms	1 hour	302 hours	$0 (Cost incl. RIA)
- 60-Day Comment Period: Copies of Quiet Zone Application	340 Public Authorities	630 copies	10 minutes	105 hours	$6,405
- Comments on Applications	715 Railroads/State Agencies	50 comments	2.5 hours	125 hours	$5,000
222.41 - Pre-Rule Quiet Zones Which Qualify For Automatic Approval - Notices/Notice Copies	262 communities/Pub. Auth.	247 notices + 1482 notifications	40 hours + 10 min.	10,127 hours	$0 (Cost incl. RIA)
- Certifications	262 communities/Pub. Auth.	262 certifications	5 minutes	22 hours	$0 (Cost incl. RIA)
- Updated Grade Crossing Inventory Forms	200 communities/Pub. Auth.	2,364 Forms	1 hour	2,364 hours	$0 (Cost incl. RIA)
- Pre-Rule Quiet Zones/Partial Quiet Zones That Will Not Be Established By Automatic Approval	200 Communities	200 notices + 1200 notifications	40 hours + 10 min.	8,200 hours	$0 (Cost incl. RIA)
					$0 (Cost incl. RIA)
- Certifications	200 Communities	200 certifications	5 minutes	17 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Forms	200 Communities	416 Forms	1 hour	416 hours	$0 (RIA)
- Detailed Grade Crossing Safety Plans	200 Communities/Pub. Auth.	100 plans	40 hours	4,000 hours	$244,000
- State-wide Implementation Plans	25 State Agencies	3 plans	120 hours	360 hours	$21,960
- Notification of Intent to Create a New Quiet Zone or Partial Quiet Zone (**New Requirement**)	200 Public Authorities	100 notices + 600 notifications	20 hours + 10 min.	2,100 hours	$128,100
- 60-Day Comment Period (**New Requirement**)	200 Railroads/State Agencies	70 comments	4 hours	280 hours	$17,080

222.42 - Intermediate Quiet Zones and Intermediate Partial Quiet Zones - Notices/Notifications	10 Communities/Pub. Auth.	10 notices + 60 notifications	40 hours + 10 min.	410 hours	$25,010
- Updated Grade Crossing Inventory Forms	10 Communities/Pub. Auth.	100 Forms	1 hour	100 hours	$6,100
- Certifications	10 Communities/Pub. Auth.	10 certifications	5 minutes	1 hour	$61
- Notice of Intent Regarding Establishment of New/Partial Quiet Zone **(New Requirement)**	10 Communities/Pub. Auth.	5 notices + 30 notifications	40 hours + 10 min.	205 hours	$12,505
- 60-Day Comment Period **(New Requirement)**	20 Railroads/State Agencies	5 comments	4 hours	20 hours	$1,220
- Notice of Intent: Conversion of Intermediate Partial Quiet Zone into 24-hour New Quiet Zone **(New Requirement)**	10 Public Authorities	5 notices+30 notif	40 hours + 10 min	205 hours	$12,505
- 60-Day Comment Period **(New Requirement)**	20 Railroads/State Agencies	5 comments	4 hours	20 hours	$1,220
222.43 - Notice and Other Information Required to Establish a Quiet Zone	216 Communities	216 notices + 648 notifications	40 hours + 10 min.	8,748 hours	$533,628
- Updated Grade Crossing Inventory Forms	216 Communities	376 Forms	1 hour	376 hours	$0 (Cost incl. RIA)
- 60-Day Comment Period on Notices of Intent	715 Railroads/State Agencies	108 comments	4 hours	432 hours	$17,280
- Notice of Intent to Continue Pre-Rule Quiet Zone or Partial Quiet Zone	Incl. in 222.41(c) and 222.42(a)(1)	Incl in 222.41c and 222.42(a)(1)	Incl. in 222.41(c) and 222.42(a)(1)	Incl.in 222.41(c) and 222.42(a)(1)	Incl.222.41(c) /222.42(a)(1)
- Updated Grade Crossing Inventory Forms and Certifications Continuing Quiet Zones	Incl in 222.41(c) and 222.42 (a)(2)	Inc. in 222.41(c) and 222.42(a)(1)	Incl. in 222.41(c) and 222.42(a)(1)	Incl in 222.41(c) and 222.42(a)(1)	Incl.222.41(c) /222.42(a)(1)
- Notice of Establishment of Quiet Zone	316 Communities/Pub. Auth.	72 notices + 432 notifications	40 hours + 10 min.	2,952 hours	$180,072 $0 (RIA)
- Updated Grade Crossing Inventory Forms	316 Communities	950 forms	1 hour	950 hours	$57,950
- Certifications Establishing Quiet Zones	216 Communities/Pub. Auth.	216 certifications	5 minutes	18 hours	$1,098
222.47 - Periodic Updates					
-Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing	200 Public Authorities	100 Affirmations + 600 Copies	30 minutes + 2 min	70 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Forms	200 Public Authorities	500 Forms	1 hour	500 hours	$0 (Cost incl. RIA)
222.51 - Review of Quiet Zone Status - Public Authority Written Statements/Commitments	9 Public Authorities	2 statements	5 hours	10 hours	$610
- Review at FRA's Initiative - Comments	3 Public Authorities	20 comments	30 minutes	10 hours	$610
222.55 - Approval of New SSMs or ASMs - Letters	265 Interested Parties	1 letter	30 minutes	1 hour	$61
- Comments	265 Interested Parties	5 comments	30 minutes	3 hours	$183
- Demo of New SSM/ASM & Approval Application	265 Interested Parties	1 letter	30 minutes	1 hour	$61

222.47 - Periodic Updates					
-Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing	200 Public Authorities	100 Affirmations + 600 Copies	30 minutes + 2 min	70 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Forms	200 Public Authorities	500 Forms	1 hour	500 hours	$0 (Cost incl. RIA)
222.57 - Review of Assoc. Administrator's Actions	265 Public Authorities/Int. Parties	1 petition + 5 petition copies	1 hour + 2 min.	1 hour	$61
- Petition For Reconsideration by Pub. Authority	200 Public Authorities	1 petition + 6 petition copies	5 hours + 2 min.	5 hours	$305
-Additional Documents/Materials	200 Public Authorities	1 document	2 hours	2 hours	$122
- Request For Informal Hearing	200 Public Authorities	1 letter	30 minutes	1 hour	$61
222.59 - Use of Wayside Horns - Notice/Copies: Grade Crossings Located Inside Quiet Zone	200 Public Authorities	10 notices + 60 notice copies	2.5 hours + 10 min.	35 hours	$2,135
-Grade Crossings Located Outside Quiet Zone	200 Public Authorities	10 notices + 60 notice copies	2.5 hours + 10 min.	35 hours	$2,135
Appendix B: Non-Engineering ASMs					
- Records For Programmed Enforcement/Public Educ.	200 Public Authorities	10 records	500 hours	5,000 hours	$305,000
- Records For Photo Enforcement	200 Public Authorities	10 records	9 hours	90 hours	$5,490
229.129 - Audible Warning Devices - Testing Reports or Records	687 Railroads	7,743 records	1 hour	7,743 hours	$309,720
- Retests of Locomotive Horns - Records	687 Railroads	650 records	1 hour	650 hours	$26,000

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All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in these amendments to the final rule between 30 and 60 days after publication of this document in the **Federal Register**.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA has obtained OMB control number 2130–0560 for the new information collection requirements resulting from the amendments to this rulemaking.

D. Environmental Impact

A Record of Decision has been prepared and is available in the public docket.

E. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a Federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. * * *''

FRA has complied with E.O. 13132 in issuing this rule. FRA consulted extensively with State and local officials prior to issuance of the NPRM, and we have taken very seriously the concerns and views expressed by State and local officials as expressed in written comments and testimony at the various public hearings throughout the country. FRA staff provided briefings to many State and local officials and organizations during the comment period to encourage full public participation in this rulemaking. As discussed earlier in this preamble, because of the great interest in this subject throughout various areas of the country, FRA was involved in an extensive outreach program to inform communities which presently have whistle bans of the effect of the Act and the regulatory process. Since the passage of the Act, FRA headquarters and regional staff have met with a large number of local officials. FRA also held a number of public meetings to discuss the issues and to receive information from the public. In addition to local citizens, both local and State officials attended and participated in the public

meetings. Additionally, FRA took the unusual step of establishing a public docket before formal initiation of rulemaking proceedings in order to enable citizens and local officials to comment on how FRA might implement the Act and to provide insight to FRA. FRA received comments from representatives of Portland, Maine; Maine Department of Transportation; Acton, Massachusetts; Wisconsin's Office of the Commissioner of Railroads; a Wisconsin State representative; a Massachusetts State senator; the Town of Ashland, Massachusetts; Bellevue, Iowa; and the mayor of Batavia, Illinois.

Since passage of the Act in 1994, FRA has consulted and briefed representatives of the American Association of State Highway and Transportation Officials (AASHTO), the National League of Cities, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, and others. Additionally we have provided extensive written information to all United States Senators and a large number of Representatives with the expectation that the information would be shared with interested local officials and constituents.

Prior to issuance of the NPRM, FRA had been in close contact with, and has received many comments from Chicago area municipal groups representing suburban areas in which, for the most part, locomotive horns are not routinely sounded. The Chicago area Council of Mayors, which represents over 200 cities and villages with over four million residents outside of Chicago, provided valuable information to FRA as did the West Central Municipal Conference and the West Suburban Mass Transit District, both of suburban Chicago.

Another association of suburban Chicago local governments, the DuPage [County] Mayors and Managers Conference, provided comments and information. Additionally, FRA officials met with many Members of Congress, who have invited FRA to their districts and have provided citizens and local officials with the opportunity to express their views on this rulemaking process. These exchanges, and others conducted directly through FRA's regional crossing managers, have been very valuable in identifying the need for flexibility in preparing the revised Final Rule.

Under 49 U.S.C. 20106, issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce. For further discussion of the effect of this rule on State and local laws and ordinances, see § 222.7 and its accompanying discussion.

As noted, this rulemaking is required by 49 U.S.C. 20153. The statute both requires that the Department issue this rule and sets out clear guidance as to the structure of such rule. The statute clearly and unambiguously requires the Department to issue rules requiring locomotive horns to be sounded at every public grade crossing. The Department has no discretion as to this aspect of the rule. The statute also makes clear that the Federal government must have a leading role in establishing the framework for providing exceptions to the requirement that horns sound at every public crossing. While some States and communities expressed opposition to Federal involvement in this area which historically has been subject to State regulation, the majority of State and local community commenters recognized and accepted the statutorily required Federal involvement. Of concern to many of these commenters, however, was the issue as to whether States or local communities should have primary responsibility for creation of quiet zones. As further discussed in the section-by-section analysis regarding ''Who may establish a quiet zone?'', States generally felt that they should have a primary role in establishing quiet zones and in administering a quiet zone. Comments from local governments tended to support the contrary view that local political subdivisions should establish quiet zones. A review of 49 U.S.C. 20153 indicates a clear Congressional preference that decision-makers be local authorities. This revised Final Rule provides non-Federal parties extensive involvement in decision-making pertaining to the creation of quiet zones. Through issuance of the Final Rule, FRA increased the role of States in creation of quiet zones and provided more opportunities for non-Federal parties, including States to have input in decisions made regarding creation and termination of quiet zones. However, given the nature of the competing interests of State and local governments in this area, FRA could not fully meet the concerns of both groups. For the reasons detailed in the section-by-section analyses of the Interim Final Rule, the Final Rule, and these Final Rule amendments, FRA asserts that the concerns of local communities have been substantially met.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Unfunded Mandates Reform Act section 201, 2 U.S.C. 1531 (1995). Section 202 of the Unfunded Mandates Reform Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation)[currently $120,700,000] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The rule issued today will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this revised Final Rule in accordance with Executive Order 13211 and has determined that this revised Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a

''significant energy action'' within the meaning of Executive Order 13211.

6. Privacy Act Statement

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) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety.

■ In consideration of the foregoing, FRA is amending chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

■ 1. Part 222 is revised to read as follows:

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

Subpart A—General

Sec.
222.1 What is the purpose of this regulation?
222.3 What areas does this regulation cover?
222.5 What railroads does this regulation apply to?
222.7 What is this regulation's effect on State and local laws and ordinances?
222.9 Definitions.
222.11 What are the penalties for failure to comply with this regulation?
222.13 Who is responsible for compliance?
222.15 How does one obtain a waiver of a provision of this regulation?
222.17 How can a State agency become a recognized State agency?

Subpart B—Use of Locomotive Horns

222.21 When must a locomotive horn be used?
222.23 How does this regulation affect sounding of a horn during an emergency or other situations?
222.25 How does this rule affect private highway-rail grade crossings?
222.27 How does this rule affect pedestrian grade crossings?

Subpart C—Exceptions to the Use of the Locomotive Horn

222.31 [Reserved]

Silenced Horns at Individual Crossings

222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

Silenced Horns at Groups of Crossings—Quiet Zones

222.35 What are minimum requirements for quiet zones?
§ 222.37 Who may establish a quiet zone?
§ 222.38 Can a quiet zone be created in the Chicago Region?
§ 222.39 How is a quiet zone established?
§ 222.41 How does this rule affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?
§ 222.42 How does this rule affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?
§ 222.43 What notices and other information are required to create or continue a quiet zone?
§ 222.45 When is a railroad required to cease routine sounding of locomotive horns at crossings?
§ 222.47 What periodic updates are required?
§ 222.49 Who may file Grade Crossing Inventory Forms?
§ 222.51 Under what conditions will quiet zone status be terminated?
§ 222.53 What are the requirements for supplementary and alternative safety measures?
§ 222.55 How are new supplementary or alternative safety measures approved?
§ 222.57 Can parties seek review of the Associate Administrator's actions?
§ 222.59 When may a wayside horn be used?
Appendix A to Part 222—Approved Supplementary Safety Measures
Appendix B to Part 222—Alternative Safety Measures
Appendix C to Part 222—Guide to Establishing Quiet Zones
Appendix D to Part 222—Determining Risk Levels
Appendix E to Part 222—Requirements for Wayside Horns
Appendix F to Part 222—Diagnostic Team Considerations
Appendix G to Part 222—Schedule of Civil Penalties

Authority: 28 U.S.C. 2461, note; 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

Subpart A—General

§ 222.1 What is the purpose of this regulation?

The purpose of this part is to provide for safety at public highway-rail grade crossings by requiring locomotive horn use at public highway-rail grade crossings except in quiet zones established and maintained in accordance with this part.

§ 222.3 What areas does this regulation cover?

(a) This part prescribes standards for sounding locomotive horns when locomotives approach and pass through public highway-rail grade crossings. This part also provides standards for the creation and maintenance of quiet zones within which locomotive horns need not be sounded.

(b) The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the intent of FRA that the remaining provisions shall continue in effect.

(c) This part does not apply to any Chicago Region highway-rail grade crossing where the railroad was excused from sounding the locomotive horn by the Illinois Commerce Commission, and where the railroad did not sound the horn, as of December 18, 2003.

§ 222.5 What railroads does this regulation apply to?

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Passenger railroads that operate only on track which is not part of the general railroad system of transportation and that operate at a maximum speed of 15 miles per hour over public highway-rail grade crossings; and

(c) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation. See 49 CFR part 209, appendix A for the definitive statement of the meaning of the preceding sentence.

§ 222.7 What is this regulation's effect on State and local laws and ordinances?

(a) Except as provided in paragraph (b) of this section, issuance of this part preempts any State law, rule, regulation, or order governing the sounding of the locomotive horn at public highway-rail grade crossings, in accordance with 49 U.S.C. 20106.

(b) This part does not preempt any State law, rule, regulation, or order governing the sounding of locomotive audible warning devices at any highway-rail grade crossing described in § 222.3(c) of this part.

(c) Except as provided in §§ 222.25 and 222.27, this part does not preempt any State law, rule, regulation, or order governing the sounding of locomotive horns at private highway-rail grade crossings or pedestrian crossings.

(d) Inclusion of SSMs and ASMs in this part or approved subsequent to issuance of this part does not constitute federal preemption of State law regarding whether those measures may be used for traffic control. Individual

states may continue to determine whether specific SSMs or ASMs are appropriate traffic control measures for that State, consistent with Federal Highway Administration regulations and the MUTCD. However, except for the SSMs and ASMs implemented at highway-rail grade crossings described in § 222.3(c) of this part, inclusion of SSMs and ASMs in this part does constitute federal preemption of State law concerning the sounding of the locomotive horn in relation to the use of those measures.

(e) Issuance of this part does not constitute federal preemption of administrative procedures required under State law regarding the modification or installation of engineering improvements at highway-rail grade crossings.

§ 222.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alternative safety measures (ASM) means a safety system or procedure, other than an SSM, established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority and which, after individual review and analysis by the Associate Administrator, is determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. Appendix B to this part lists such measures.

Associate Administrator means the Associate Administrator for Safety of the Federal Railroad Administration or the Associate Administrator's delegate.

Channelization device means a traffic separation system made up of a raised longitudinal channelizer, with vertical panels or tubular delineators, that is placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. ''Tubular markers'' and ''vertical panels'', as described in the MUTCD, are acceptable channelization devices for purposes of this part. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the channelization device.

Chicago Region means the following six counties in the State of Illinois: Cook, DuPage, Lake, Kane, McHenry and Will.

Crossing Corridor Risk Index means a number reflecting a measure of risk to the motoring public at public grade crossings along a rail corridor, calculated in accordance with the procedures in appendix D of this part, representing the average risk at each public crossing within the corridor. This risk level is determined by averaging among all public crossings within the corridor, the product of the number of predicted collisions per year and the predicted likelihood and severity of casualties resulting from those collisions at each public crossing within the corridor.

Diagnostic team as used in this part, means a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing.

Effectiveness rate means a number between zero and one which represents the reduction of the likelihood of a collision at a public highway-rail grade crossing as a result of the installation of an SSM or ASM when compared to the same crossing equipped with conventional active warning systems of flashing lights and gates. Zero effectiveness means that the SSM or ASM provides no reduction in the probability of a collision, while an effectiveness rating of one means that the SSM or ASM is totally effective in eliminating collision risk. Measurements between zero and one reflect the percentage by which the SSM or ASM reduces the probability of a collision.

FRA means the Federal Railroad Administration.

Grade Crossing Inventory Form means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov.*

Intermediate Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

Intermediate Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive audible warning device means a horn, whistle, siren, or bell affixed to a locomotive that is capable of producing an audible signal.

Locomotive horn means a locomotive air horn, steam whistle, or similar audible warning device (see 49 CFR 229.129) mounted on a locomotive or control cab car. The terms ''locomotive horn'', ''train whistle'', ''locomotive whistle'', and ''train horn'' are used interchangeably in the railroad industry. For purposes of this part, locomotive horns used in rapid transit operations must be suitable for street usage and/or designed in accordance with State law requirements.

Median means the portion of a divided highway separating the travel ways for traffic in opposite directions.

MUTCD means the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.

Nationwide Significant Risk Threshold means a number reflecting a measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in appendix D of this part.

Unless otherwise indicated, references in this part to the Nationwide Significant Risk Threshold reflect its level as last published by FRA in the **Federal Register**.

New Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded between the hours of 10 p.m. and 7 a.m., but are routinely sounded during the remaining portion of the day, and which does not qualify as a Pre-Rule Partial Quiet Zone or an Intermediate Partial Quiet Zone.

New Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as either a Pre-Rule Quiet Zone or Intermediate Quiet Zone.

Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs are used at locations where highway speeds do not exceed 40 miles per hour and are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which locomotive horns are not routinely sounded for a specified period of time during the evening and/or nighttime hours.

Pedestrian grade crossing means, for purposes of this part, a separate designed sidewalk or pathway where pedestrians, but not vehicles, cross railroad tracks. Sidewalk crossings contiguous with, or separate but adjacent to, public highway-rail grade crossings are presumed to be part of the public highway-rail grade crossing and are not considered pedestrian grade crossings.

Power-out indicator means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

Pre-existing Modified Supplementary Safety Measure (Pre-existing Modified SSM) means a safety system or procedure that is listed in appendix A to this Part, but is not fully compliant with the standards set forth therein, which was installed before December 18, 2003 by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. The calculation of risk reduction credit for pre-existing modified SSMs is addressed in appendix B of this part.

Pre-existing Supplementary Safety Measure (Pre-existing SSM) means a safety system or procedure established in accordance with this part before December 18, 2003 which was provided by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. These safety measures must fully comply with the SSM requirements set forth in appendix A of this part. The calculation of risk reduction credit for qualifying pre-existing SSMs is addressed in appendix A.

Pre-Rule Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening and/or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Pre-Rule Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Private highway-rail grade crossing means, for purposes of this part, a highway-rail grade crossing which is not a public highway-rail grade crossing.

Public authority means the public entity responsible for traffic control or law enforcement at the public highway-rail grade or pedestrian crossing.

Public highway-rail grade crossing means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. If a public authority maintains the roadway on both sides of the crossing, the crossing is considered a public crossing for purposes of this part.

Quiet zone means a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded.

Quiet Zone Risk Index means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings) and reduced risk due to implementation, if any, of SSMs and ASMs with the quiet zone. The calculation of the Quiet Zone Risk Index, which is explained in appendix D of this part, does not differ for partial quiet zones.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Recognized State agency means, for purposes of this part, a State agency, responsible for highway-rail grade crossing safety or highway and road safety, that has applied for and been approved by FRA as a participant in the quiet zone development process.

Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With respect to Pre-Rule Partial Quiet Zones, a relevant collision shall not include collisions that occur during the time period within which the locomotive horn is routinely sounded.

Risk Index With Horns means a measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within a quiet zone. In Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones, the Risk Index With Horns is determined by adjusting the Crossing Corridor Risk Index to account for the decreased risk that would result if locomotive horns were routinely sounded at each public highway-rail grade crossing.

Supplementary safety measure (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Associate Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A of this part lists such SSMs.

Waiver means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

Wayside horn means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

§ 222.11 What are the penalties for failure to comply with this regulation?

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of least $550 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G of this part contains a schedule of civil penalty amounts used in connection with this part.

§ 222.13 Who is responsible for compliance?

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

§ 222.15 How does one obtain a waiver of a provision of this regulation?

(a) Except as provided in paragraph (b) of this section, two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party, and explain why applying the requirement that a joint submission be made in that instance would not be likely to contribute significantly to public safety. If the Associate Administrator determines that applying the requirement for a jointly filed submission to that particular petition would not be likely to significantly contribute to public safety, the Associate Administrator shall waive the requirement for joint submission and accept the petition for consideration. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 222.17 How can a State agency become a recognized State agency?

(a) Any State agency responsible for highway-rail grade crossing safety and/or highway and road safety may become a recognized State agency by submitting an application to the Associate Administrator that contains:

(1) A detailed description of the proposed scope of involvement in the quiet zone development process;

(2) The name, address, and telephone number of the person(s) who may be contacted to discuss the State agency application; and

(3) A statement from State agency counsel which affirms that the State agency is authorized to undertake the responsibilities proposed in its application.

(b) The Associate Administrator will approve the application if, in the Associate Administrator's judgment, the proposed scope of State agency involvement will facilitate safe and effective quiet zone development. The Associate Administrator may include in any decision of approval such conditions as he/she deems necessary and appropriate.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing. Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b)(1) Railroads to which this part applies shall comply with all the requirements contained in this paragraph (b) beginning on December 15, 2006. On and after June 24, 2005, but prior to December 15, 2006, a railroad shall, at its option, comply with this section or shall sound the locomotive horn in the manner required by State law, or in the absence of State law, in the manner required by railroad operating rules in effect immediately prior to June 24, 2005.

(2) Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with section 229.9 of this chapter, the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing. It shall not constitute a violation of this section if, acting in good faith, a locomotive engineer begins sounding the locomotive horn not more than 25 seconds before the locomotive enters the crossing, if the locomotive engineer is unable to precisely estimate the time of arrival of the train at the crossing for whatever reason.

(3) Trains, locomotive consists and individual locomotives traveling at

speeds in excess of 60 mph shall not begin sounding the horn more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

(c) As stated in § 222.3(c) of this part, this section does not apply to any Chicago Region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

(d) Trains, locomotive consists and individual locomotives that have stopped in close proximity to a public highway-rail grade crossing may approach the crossing and sound the locomotive horn for less than 15 seconds before the locomotive enters the highway-rail grade crossing, if the locomotive engineer is able to determine that the public highway-rail grade crossing is not obstructed and either:

(1) The public highway-rail grade crossing is equipped with automatic flashing lights and gates and the gates are fully lowered; or

(2) There are no conflicting highway movements approaching the public highway-rail grade crossing.

(e) Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with paragraphs (b) and (d) of this section.

§ 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to animals, vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death, or property damage.

(2) Notwithstanding any other provision of this part, including provisions addressing the establishment of a quiet zone, limits on the length of time in which a horn may be sounded, or installation of wayside horns within quiet zones, this part does not preclude the sounding of locomotive horns in emergency situations, nor does it impose a legal duty to sound the locomotive horn in such situations.

(b) Nothing in this part restricts the use of the locomotive horn in the following situations:

(1) When a wayside horn is malfunctioning;

(2) When active grade crossing warning devices have malfunctioned and use of the horn is required by one of the following sections of this chapter: §§ 234.105, 234.106, or 234.107;

(3) When grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing of the system; or

(4) When SSMs, modified SSMs or engineering SSMs no longer comply with the requirements set forth in appendix A of this part or the conditions contained within the Associate Administrator's decision to approve the quiet zone in accordance with section 222.39(b) of this part.

(c) Nothing in this part restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (e.g., to announce the approach of a train to roadway workers in accordance with a program adopted under part 214 of this chapter, or where required for other purposes under railroad operating rules).

§ 222.25 How does this rule affect private highway-rail grade crossings?

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. However, where State law requires the sounding of a locomotive horn at private highway-rail grade crossings, the locomotive horn shall be sounded in accordance with § 222.21 of this part. Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at private highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with §§ 222.21(b) and (d) of this part.

(a) Private highway-rail grade crossings located within the boundaries of a quiet zone must be included in the quiet zone.

(b)(1) Private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones and allow access to the public, or which provide access to active industrial or commercial sites, must be evaluated by a diagnostic team and equipped or treated in accordance with the recommendations of such diagnostic team.

(2) The public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in the diagnostic team review of private highway-rail grade crossings.

(c)(1) At a minimum, each approach to every private highway-rail grade crossing within a New Quiet Zone or New Partial Quiet Zone shall be marked by a crossbuck and a ''STOP'' sign, which are compliant with MUTCD standards unless otherwise prescribed by State law, and shall be equipped with advance warning signs in compliance with § 222.35(c) of this part.

(2) At a minimum, each approach to every private highway-rail grade crossing within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone shall, by June 24, 2008, be marked by a crossbuck and a ''STOP'' sign, which are compliant with MUTCD standards unless otherwise prescribed by State law, and shall be equipped with advance warning signs in compliance with § 222.35(c) of this part.

§ 222.27 How does this rule affect pedestrian grade crossings?

This rule does not require the routine sounding of locomotive horns at pedestrian grade crossings. However, where State law requires the sounding of a locomotive horn at pedestrian grade crossings, the locomotive horn shall be sounded in accordance with § 222.21 of this part. Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at pedestrian grade crossings, that locomotive audible warning device shall be sounded in accordance with §§ 222.21(b) and (d) of this part.

(a) Pedestrian grade crossings located within the boundaries of a quiet zone must be included in the quiet zone.

(b) Pedestrian grade crossings that are located in New Quiet Zones or New Partial Quiet Zones must be evaluated by a diagnostic team and equipped or treated in accordance with the recommendations of such diagnostic team.

(c) The public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in diagnostic team reviews of pedestrian grade crossings.

(d) *Advance warning signs.* (1) Each approach to every pedestrian grade crossing within a New Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(2) Each approach to every pedestrian grade crossing within a New Partial Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing or that train horns are not

sounded at the crossing between the hours of 10 p.m. and 7 a.m., whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

(3) Each approach to every pedestrian grade crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(4) Each approach to every pedestrian grade crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing or that train horns are not sounded at the crossing for a specified period of time, whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

Subpart C—Exceptions to the Use of the Locomotive Horn

§ 222.31 [Reserved]

Silenced Horns at Individual Crossings

§ 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

(a) A railroad operating over an individual public highway-rail crossing may, at its discretion, cease the sounding of the locomotive horn if the locomotive speed is 15 miles per hour or less and train crew members, or appropriately equipped flaggers, as defined in 49 CFR 234.5, flag the crossing to provide warning of approaching trains to motorists.

(b) This section does not apply where active grade crossing warning devices have malfunctioned and use of the horn is required by 49 CFR 234.105, 234.106, or 234.107.

Silenced Horns at Groups of Crossings—Quiet Zones

§ 222.35 What are the minimum requirements for quiet zones?

The following requirements apply to quiet zones established in conformity with this part.

(a) *Minimum length.* (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, the minimum length of a New Quiet Zone or New Partial Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way.

(ii) The one-half mile minimum length requirement shall be waived for any New Quiet Zone or New Partial Quiet Zone that is added onto an existing quiet zone, provided there is no public highway-rail grade crossing at which locomotive horns are routinely sounded within one-half mile of the New Quiet Zone or New Partial Quiet Zone.

(iii) New Quiet Zones and New Partial Quiet Zones established along the same rail line within a single political jurisdiction shall be separated by at least one public highway-rail grade crossing, unless a New Quiet Zone or New Partial Quiet Zone is being added onto an existing quiet zone.

(2)(i) The length of a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may continue unchanged from that which existed as of October 9, 1996.

(ii) With the exception of combining adjacent Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones, the addition of any public highway-rail grade crossing to a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone shall end the grandfathered status of that quiet zone and transform it into a New Quiet Zone or New Partial Quiet Zone that must comply with all requirements applicable to New Quiet Zones and New Partial Quiet Zones.

(iii) The deletion of any public highway-rail grade crossing from a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone status.

(3) A quiet zone may include grade crossings on a segment of rail line crossing more than one political jurisdiction.

(b) *Active grade crossing warning devices.* (1) Each public highway-rail grade crossing in a New Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(2) With the exception of public highway-rail grade crossings that will be temporarily closed in accordance with appendix A of this part, each public highway-rail grade crossing in a New Partial Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(3) Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones must retain, and may upgrade, the grade crossing safety warning system which existed as of December 18, 2003. Any upgrade involving the installation or renewal of an automatic warning device system shall include constant warning time devices, where reasonably practical, and power-out indicators. In no event may the grade crossing safety warning system, which existed as of December 18, 2003, be downgraded. Risk reduction resulting from upgrading to flashing lights or gates may be credited in calculating the Quiet Zone Risk Index.

(c) *Advance warning signs.* (1) Each highway approach to every public and private highway-rail grade crossing within a New Quiet Zone shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(2) Each highway approach to every public and private highway-rail grade crossing within a New Partial Quiet Zone shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing or that train horns are not sounded at the crossing between the hours of 10 p.m. and 7 a.m., whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

(3) Each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(4) Each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with an advance warning sign that advises the motorist that train horns are not sounded at the crossing or that train horns are not sounded at the crossing for a specified period of time, whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

(5) This paragraph (c) does not apply to public and private highway-rail grade crossings equipped with wayside horns that conform to the requirements set forth in § 222.59 and Appendix E of this part.

(d) *Bells.* (1) Each public highway-rail grade crossing in a New Quiet Zone or New Partial Quiet Zone that is subjected to pedestrian traffic and equipped with

one or more automatic bells shall retain those bells in working condition.

(2) Each public highway-rail grade crossing in a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that is subjected to pedestrian traffic and equipped with one or more automatic bells shall retain those bells in working condition.

(e) All private highway-rail grade crossings within the quiet zone must be treated in accordance with this section and § 222.25 of this part.

(f) All pedestrian grade crossings within a quiet zone must be treated in accordance with § 222.27 of this part.

(g) All public highway-rail grade crossings within the quiet zone must be in compliance with the requirements of the MUTCD.

§ 222.37 Who may establish a quiet zone?

(a) A public authority may establish quiet zones that are consistent with the provisions of this part. If a proposed quiet zone includes public highway-rail grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part.

(b) A public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

(c) A State agency may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA; however, any public authority eligible to establish a quiet zone under this part may do so.

§ 222.38 Can a quiet zone be created in the Chicago Region?

Public authorities that are eligible to establish quiet zones under this part may create New Quiet Zones or New Partial Quiet Zones in the Chicago Region, provided the New Quiet Zone or New Partial Quiet Zone does not include any highway-rail grade crossing described in § 222.3(c) of this part.

§ 222.39 How is a quiet zone established?

(a) *Public authority designation.* This paragraph (a) describes how a quiet zone may be designated by a public authority without the need for formal application to, and approval by, FRA. If a public authority complies with either paragraph (a)(1), (a)(2), or (a)(3) of this section, and complies with the information and notification provisions of § 222.43 of this part, a public authority may designate a quiet zone without the necessity for FRA review and approval.

(1) A quiet zone may be established by implementing, at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in appendix A of this part.

(2) A quiet zone may be established if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as follows:

(i) If the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold without being reduced by implementation of SSMs; or

(ii) If SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold.

(3) A quiet zone may be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at or below the Risk Index With Horns.

(b) *Public authority application to FRA.* (1) A public authority may apply to the Associate Administrator for approval of a quiet zone that does not meet the standards for public authority designation under paragraph (a) of this section, but in which it is proposed that one or more safety measures be implemented. Such proposed quiet zone may include only ASMs, or a combination of ASMs and SSMs at various crossings within the quiet zone. Note that an engineering improvement which does not fully comply with the requirements for an SSM under appendix A of this part, is considered to be an ASM. The public authority's application must:

(i) Contain an accurate, complete and current Grade Crossing Inventory Form for each public, private and pedestrian grade crossing within the proposed quiet zone;

(ii) Contain sufficient detail concerning the present safety measures at each public, private and pedestrian grade crossing proposed to be included in the quiet zone to enable the Associate Administrator to evaluate their effectiveness;

(iii) Contain detailed information about diagnostic team reviews of any crossing within the proposed quiet zone, including a membership list and a list of recommendations made by the diagnostic team;

(iv) Contain a statement describing efforts taken by the public authority to address comments submitted by each railroad operating the public highway-rail grade crossings within the quiet zone, the State agency responsible for highway and road safety, and the State agency responsible for grade crossing safety in response to the Notice of Intent. This statement shall also list any objections to the proposed quiet zone that were raised by the railroad(s) and State agencies;

(v) Contain detailed information as to which safety improvements are proposed to be implemented at each public, private, or pedestrian grade crossing within the proposed quiet zone;

(vi) Contain a commitment to implement the proposed safety improvements within the proposed quiet zone; and

(vii) Demonstrate through data and analysis that the proposed implementation of these measures will reduce the Quiet Zone Risk Index to a level at, or below, either the Risk Index With Horns or the Nationwide Significant Risk Threshold.

(2) If the proposed quiet zone contains newly established public or private highway-rail grade crossings, the public authority's application for approval must also include five-year projected vehicle and rail traffic counts for each newly established grade crossing;

(3) *60-day comment period.* (i) The public authority application for FRA approval of the proposed quiet zone shall be provided, by certified mail, return receipt requested, to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, any party that receives a copy of the public authority application may submit comments on the public authority application to the Associate Administrator during the 60-day period after the date on which the public authority application was mailed.

(iii) If the public authority application for FRA approval contains written statements from each railroad operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety stating that the railroad, vehicular traffic authority and State agencies have waived their rights to provide comments on the public authority application, the 60-day comment period under paragraph (b)(3)(ii) of this section shall be waived.

(4)(i) After reviewing any comments submitted under paragraph (b)(3)(ii) of this section, the Associate Administrator will approve the quiet zone if, in the Associate Administrator's judgment, the public authority is in compliance with paragraphs (b)(1) and (b)(2) of this section and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index that is either:

(A) At or below the Risk Index With Horns or

(B) At or below the Nationwide Significant Risk Threshold.

(ii) The Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. If the Associate Administrator does not approve the quiet zone, the Associate Administrator will describe, in the decision, the basis upon which the decision was made. Decisions issued by the Associate Administrator on quiet zone applications shall be provided to all parties listed in paragraph (b)(3)(i) of this section and may be reviewed as provided in §§ 222.57(b) and (d) of this part.

(c) Appendix C of this part contains guidance on how to create a quiet zone.

§ 222.41 How does this rule affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?

(a) *Pre-Rule Quiet Zones that will be established by automatic approval.* (1) A Pre-Rule Quiet Zone may be established by automatic approval and remain in effect, subject to § 222.51, if the Pre-Rule Quiet Zone is in compliance with §§ 222.35 (minimum requirements for quiet zones) and 222.43 of this part (notice and information requirements) and:

(i) The Pre-Rule Quiet Zone has at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in appendix A of this part; or

(ii) The Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**; or

(iii) The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**, but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public highway-rail grade crossing within the quiet zone since April 27, 2000 or

(iv) The Quiet Zone Risk Index is at, or below, the Risk Index with Horns.

(2) The public authority shall provide Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, no later than December 24, 2005.

(b) *Pre-Rule Partial Quiet Zones that will be established by automatic approval.* (1) A Pre-Rule Partial Quiet Zone may be established by automatic approval and remain in effect, subject to § 222.51, if the Pre-Rule Partial Quiet Zone is in compliance with §§ 222.35 (minimum requirements for quiet zones) and 222.43 of this part (notice and information requirements) and:

(i) The Pre-Rule Partial Quiet Zone has at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in appendix A of this part; or

(ii) The Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**; or

(iii) The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**, but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public highway-rail grade crossing within the quiet zone since April 27, 2000. With respect to Pre-Rule Partial Quiet Zones, collisions that occurred during the time period within which the locomotive horn was routinely sounded shall not be considered ''relevant collisions''; or

(iv) The Quiet Zone Risk Index is at, or below, the Risk Index with Horns.

(2) The public authority shall provide Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, no later than December 24, 2005.

(c) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by automatic approval.* (1) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone will not be established by automatic approval under paragraph (a) or (b) of this section, existing restrictions may, at the public authority's discretion, remain in place until June 24, 2008, if a Notice of Quiet Zone Continuation is provided in accordance with § 222.43 of this part.

(2)(i) Existing restrictions on the routine sounding of the locomotive horn may remain in place until June 24, 2010, if:

(A) Notice of Intent is mailed, in accordance with § 222.43 of this part, by February 24, 2008; and

(B) A detailed plan for quiet zone improvements is filed with the Associate Administrator by June 24, 2008. The detailed plan shall include a detailed explanation of, and timetable for, the safety improvements that will be implemented at each public, private and pedestrian grade crossing located within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone which are necessary to comply with §§ 222.25, 222.27, 222.35 and 222.39 of this part.

(ii) In the event that the safety improvements planned for the quiet zone require approval of FRA under § 222.39(b) of this part, the public authority should apply for such approval prior to December 24, 2007, to ensure that FRA has ample time in which to review such application prior to the end of the extension period.

(3) Locomotive horn restrictions may continue for an additional three years beyond June 24, 2010, if:

(i) Prior to June 24, 2008, the appropriate State agency provides to the Associate Administrator: A comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones which, when implemented, would enable them to qualify as quiet zones under this part; and

(ii) Prior to June 24, 2009, either safety improvements are initiated at a portion of the crossings within the quiet zone, or the appropriate State agency has participated in quiet zone improvements in one or more Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones elsewhere within the State.

(4) A public authority may establish a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone upon compliance with:

(A) The Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone requirements contained within §§ 222.25, 222.27, and 222.35 of this part;

(B) The quiet zone standards set forth in § 222.39 of this part; and

(C) All applicable notification and filing requirements contained within this paragraph (c) and § 222.43 of this part.

(d) *Pre-Rule Partial Quiet Zones that will be converted to 24-hour New Quiet Zones.* A Pre-Rule Partial Quiet Zone

may be converted into a 24-hour New Quiet Zone, if:

(1) The quiet zone is brought into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part;

(2) The quiet zone is brought into compliance with the quiet zone standards set forth in § 222.39 of this part; and

(3) The public authority complies with all applicable notification and filing requirements contained within this paragraph (c) and § 222.43 of this part.

§ 222.42 How does this rule affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?

(a)(1) Existing restrictions may, at the public authority's discretion, remain in place within the Intermediate Quiet Zone or Intermediate Partial Quiet Zone until June 24, 2006, if the public authority provides Notice of Quiet Zone Continuation, in accordance with § 222.43 of this part.

(2) A public authority may continue locomotive horn sounding restrictions beyond June 24, 2006 by establishing a New Quiet Zone or New Partial Quiet Zone. A public authority may establish a New Quiet Zone or New Partial Quiet Zone if:

(i) Notice of Intent is mailed, in accordance with § 222.43 of this part;

(ii) The quiet zone complies with the standards set forth in § 222.39 of this part;

(iii) The quiet zone complies with the New Quiet Zone standards set forth in §§ 222.25, 222.27, and 222.35 of this part;

(iv) Notice of Quiet Zone Establishment is mailed, in accordance with § 222.43 of this part, by June 3, 2006.

(b) *Conversion of Intermediate Partial Quiet Zones into 24-hour New Quiet Zones.* An Intermediate Partial Quiet Zone may be converted into a 24-hour New Quiet Zone if:

(1) Notice of Intent is mailed, in accordance with § 222.43 of this part;

(2) The quiet zone complies with the standards set forth in § 222.39 of this part;

(3) The quiet zone is brought into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part; and

(4) Notice of Quiet Zone Establishment is mailed, in accordance with § 222.43 of this part, by June 3, 2006.

§ 222.43 What notices and other information are required to create or continue a quiet zone?

(a)(1) The public authority shall provide written notice, by certified mail, return receipt requested, of its intent to create a New Quiet Zone or New Partial Quiet Zone under § 222.39 of this part or to implement new SSMs or ASMs within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone under § 222.41(c) or (d) of this part. Such notification shall be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; and the State agency responsible for grade crossing safety.

(2) The public authority shall provide written notification, by certified mail, return receipt requested, to continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone under § 222.41 of this part or to continue an Intermediate Quiet Zone or Intermediate Partial Quiet Zone under § 222.42 of this part. Such notification shall be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(3) The public authority shall provided written notice, by certified mail, return receipt requested, of the establishment of a quiet zone under § 222.39 or 222.41 of this part. Such notification shall be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(b) *Notice of Intent.* (1) *Timing.* (i) The Notice of Intent shall be mailed at least 60 days before the mailing of the Notice of Quiet Zone Establishment, unless the public authority obtains written comments and/or ''no-comment'' statements from each railroad operating over public highway-rail grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section.

(ii) The Notice of Intent shall be mailed no later than February 24, 2008 for all Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones governed by §§ 222.41(c) and (d) of this part, in order to continue existing locomotive horn sounding restrictions beyond June 24, 2008 without interruption.

(2) *Required Contents.* The Notice of Intent shall include the following:

(i) A list of each public, private, and pedestrian grade crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name, if applicable.

(ii) A statement of the time period within which restrictions would be imposed on the routine sounding of the locomotive horn (i.e., 24 hours or from 10 p.m. until 7 a.m.).

(iii) A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

(iv) The name and title of the person who will act as point of contact during the quiet zone development process and the manner in which that person can be contacted.

(v) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(1) of this section.

(3) *60-day comment period.* (i) A party that receives a copy of the public authority's Notice of Intent may submit information or comments about the proposed quiet zone to the public authority during the 60-day period after the date on which the Notice of Intent was mailed.

(ii) The 60-day comment period established under paragraph (b)(3)(i) of this section may terminate when the public authority obtains from each railroad operating over public highway-rail grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety:

(A) Written comments; or

(B) Written statements that the railroad and State agency do not have any comments on the Notice of Intent (''no-comment statements'').

(c) *Notice of Quiet Zone Continuation.* (1) *Timing.* (i) In order to prevent the resumption of locomotive horn sounding on June 24, 2005, the Notice of Quiet Zone Continuation under § 222.41 or 222.42 of this part shall be served no later than June 3, 2005.

(ii) If the Notice of Quiet Zone Continuation under § 222.41 or 222.42 of this part is mailed after June 3, 2005, the Notice of Quiet Zone Continuation shall state on which date locomotive horn use at grade crossings within the quiet zone shall cease, but in no event shall that date be earlier than 21 days after the date of mailing.

(2) *Required Contents.* The Notice of Quiet Zone Continuation shall include the following:

(i) A list of each public, private, and pedestrian grade crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

(ii) A specific reference to the regulatory provision that provides the basis for quiet zone continuation, citing as appropriate, § 222.41 or 222.42 of this part.

(iii) A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or nighttime hours only.)

(iv) An accurate and complete Grade Crossing Inventory Form for each public, private, and pedestrian grade crossing within the quiet zone that reflects conditions currently existing at the crossing.

(v) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

(vi) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(2) of this section.

(vii) A statement signed by the chief executive officer of each public authority participating in the continuation of the quiet zone, in which the chief executive officer certifies that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

(d) *Notice of Quiet Zone Establishment.* (1) *Timing.* (i) The Notice of Quiet Zone Establishment shall provide the date upon which the quiet zone will be established, but in no event shall the date be earlier than 21 days after the date of mailing.

(ii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall not be mailed less than 60 days after the date on which the Notice of Intent was mailed, unless the Notice of Quiet Zone Establishment contains a written statement affirming that written comments and/or ''no-comment'' statements have been received from each railroad operating over public highway-rail grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section.

(2) *Required contents.* The Notice of Quiet Zone Establishment shall include the following:

(i) A list of each public, private, and pedestrian grade crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name, if applicable.

(ii) A specific reference to the regulatory provision that provides the basis for quiet zone establishment, citing as appropriate, § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), 222.41(a)(1)(i), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(i), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part.

(A) If the Notice contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part, it shall include a copy of the FRA Web page that contains the quiet zone data upon which the public authority is relying (*http://www.fra.dot.gov/us/content/1337*).

(B) If the Notice contains a specific reference to § 222.39(b) of this part, it shall include a copy of FRA's notification of approval.

(iii) If a diagnostic team review was required under § 222.25 or 222.27 of this part, the Notice shall include a statement affirming that the State agency responsible for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice shall also include a list of recommendations made by the diagnostic team.

(iv) A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or from 10 p.m. until 7 a.m.).

(v) An accurate and complete Grade Crossing Inventory Form for each public, private, and pedestrian grade crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented.

(vi) An accurate, complete and current Grade Crossing Inventory Form for each public, private, and pedestrian grade crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described.

(vii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall contain a written statement affirming that the Notice of Intent was provided in accordance with paragraph (a)(1) of this section. This statement shall also state the date on which the Notice of Intent was mailed.

(viii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, and the Notice of Intent was mailed less than 60 days before the mailing of the Notice of Quiet Zone Establishment, the Notice of Quiet Zone Establishment shall also contain a written statement affirming that written comments and/or ''no-comment'' statements have been received from each railroad operating over public highway-rail grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section.

(ix) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

(x) A list of the names and addresses of each party that shall be notified in accordance with paragraph (a)(3) of this section.

(xi) A statement signed by the chief executive officer of each public authority participating in the establishment of the quiet zone, in which the chief executive officer shall certify that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

§ 222.45 When is a railroad required to cease routine sounding of locomotive horns at crossings?

On the date specified in a Notice of Quiet Zone Continuation or Notice of Quiet Zone Establishment that complies with the requirements set forth in § 222.43 of this part, a railroad shall refrain from, or cease, routine sounding of the locomotive horn at all public, private and pedestrian grade crossings identified in the Notice.

§ 222.47 What periodic updates are required?

(a) *Quiet zones with SSMs at each public crossing.* This paragraph

addresses quiet zones established pursuant to §§ 222.39(a)(1), 222.41(a)(1)(i), and 222.41(b)(1)(i) (quiet zones with an SSM implemented at every public crossing within the quiet zone) of this part. Between 4½ and 5 years after the date of the quiet zone establishment notice provided by the public authority under § 222.43 of this part, and between 4½ and 5 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that the SSMs implemented within the quiet zone continue to conform to the requirements of appendix A of this part. Copies of such affirmation must be provided by certified mail, return receipt requested, to the parties identified in § 222.43(a)(3) of this part; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone.

(b) *Quiet zones which do not have a supplementary safety measure at each public crossing.* This paragraph addresses quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b), §§ 222.41(a)(1)(ii), (a)(1)(iii), and (a)(1)(iv), and §§ 222.41(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) (quiet zones which do not have an SSM at every public crossing within the quiet zone) of this part. Between 2½ and 3 years after the date of the quiet zone establishment notice provided by the public authority under § 222.43 of this part, and between 2½ and 3 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part or the terms of the Quiet Zone approval. Copies of such notification must be provided to the parties identified in § 222.43(a)(3) of this part by certified mail, return receipt requested; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian grade crossing within the quiet zone.

§ 222.49 Who may file Grade Crossing Inventory Forms?

(a) Grade Crossing Inventory Forms required to be filed with the Associate Administrator in accordance with §§ 222.39, 222.43 and 222.47 of this part may be filed by the public authority if, for any reason, such forms are not timely submitted by the State and railroad.

(b) Within 30 days after receipt of a written request of the public authority, the railroad owning the line of railroad that includes public or private highway rail grade crossings within the quiet zone or proposed quiet zone shall provide to the State and public authority sufficient current information regarding the grade crossing and the railroad's operations over the grade crossing to enable the State and public authority to complete the Grade Crossing Inventory Form.

§ 222.51 Under what conditions will quiet zone status be terminated?

(a) *New Quiet Zones—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each quiet zone established pursuant to §§ 222.39(a)(2) and 222.39(b) of this part, and in comparison to the Nationwide Significant Risk Threshold. FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will not conduct annual risk reviews for quiet zones established by having an SSM at every public crossing within the quiet zone or for quiet zones established by reducing the Quiet Zone Risk Index to the Risk Index With Horns.

(2) *Actions to be taken by public authority to retain quiet zone.* If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, the quiet zone will terminate six months from the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, unless the public authority takes the following actions:

(i) Within six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the crossings within the quiet zone; and

(ii) Within three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or the Risk Index With Horns, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b) of this part, for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to the Risk Index With Horns, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) of this part and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (a)(2)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold. Failure to comply with paragraph (a)(2)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold.

(b) *Pre-Rule Quiet Zones—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each Pre-Rule Quiet Zone and Pre-Rule Partial Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(b)(1)(ii), and 222.41(b)(1)(iii) of this part. FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will also notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

(2) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones authorized under §§ 222.41(a)(1)(ii) and 222.41(b)(1)(ii).* (i) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold, the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by the FRA remains at, or below, the Nationwide Significant Risk Threshold.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold and no relevant collisions have occurred at crossings within the quiet zone within the five years preceding the annual risk review, then the quiet zone may continue as though it originally received automatic approval pursuant to § 222.41(a)(1)(iii) or 222.41(b)(1)(iii) of this part.

(iii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(3) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones authorized under §§ 222.41(a)(1)(iii) and 222.41(b)(1)(iii).* (i) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold, but below twice the Nationwide Significant Risk Threshold, and no relevant collisions had occurred within the five-year qualifying period, the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if a relevant collision occurred at a public grade crossing within the quiet zone during the preceding calendar year, the quiet zone will terminate six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index is at, or exceeds twice the Nationwide Significant Risk Threshold or that a relevant collision occurred at a crossing within the quiet zone, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(4) *Actions to be taken by the public authority to retain a quiet zone.*

(i) Within six months after the date of FRA notification, the public authority shall provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the public crossings within the quiet zone; and

(ii) Within three years of the date of FRA notification, the public authority shall complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or the Risk Index With Horns, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b) of this part, for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) of this part and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (b)(4)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA. Failure to comply with paragraph (b)(4)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA.

(c) *Review at FRA's initiative.* (1) The Associate Administrator may, at any time, review the status of any quiet zone.

(2) If the Associate Administrator makes any of the following preliminary determinations, the Associate Administrator will provide written notice to the public authority, all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety and will publish a notice of the determination in the **Federal Register:**

(i) Safety systems and measures implemented within the quiet zone do not fully compensate for the absence of the locomotive horn due to a substantial increase in risk;

(ii) Documentation relied upon to establish the quiet zone contains substantial errors that may have an adverse impact on public safety; or

(iii) Significant risk with respect to loss of life or serious personal injury exists within the quiet zone.

(3) After providing an opportunity for comment, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The Associate Administrator will provide a copy of his/her decision to the public authority and all parties listed in paragraph (c)(2) of this section. The public authority may appeal the Associate Administrator's decision in accordance with § 222.57(c) of this part. Nothing in this section is intended to limit the Administrator's emergency authority under 49 U.S.C. 20104 and 49 CFR part 211.

(d) *Termination by the public authority.* (1) Any public authority that participated in the establishment of a quiet zone under the provisions of this part may, at any time, withdraw its quiet zone status.

(2) A public authority may withdraw its quiet zone status by providing written notice of termination, by certified mail, return receipt requested, to all railroads operating the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

(3)(i) If the quiet zone that is being withdrawn was part of a multi-jurisdictional quiet zone, the remaining quiet zones may remain in effect, provided the public authorities responsible for the remaining quiet zones provide statements to the Associate Administrator certifying that the Quiet Zone Risk Index for each remaining quiet zone is at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. These statements shall be provided, no later than six months after the date on which the notice of quiet zone termination was mailed, to all parties listed in paragraph (d)(2) of this section.

(ii) If any remaining quiet zone has a Quiet Zone Risk Index in excess of the Nationwide Significant Risk Threshold and the Risk Index With Horns, the public authority responsible for the quiet zone shall submit a written commitment, to all parties listed in paragraph (d)(2) of this section, to reduce the Quiet Zone Risk Index to a level at or below the Nationwide Significant Risk Threshold or the Risk Index With Horns within three years. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to reduce the Quiet Zone Risk Index. This commitment statement shall be provided to all parties listed in

paragraph (d)(2) of this section no later than six months after the date on which the notice of quiet zone termination was mailed.

(iii) Failure to comply with paragraphs (d)(3)(i) and (d)(3)(ii) of this section shall result in the termination of the remaining quiet zone(s) six months after the date on which the notice of quiet zone termination was mailed by the withdrawing public authority in accordance with paragraph (d)(2) of this section.

(iv) Failure to complete implementation of SSMs and/or ASMs to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Index or the Risk Index With Horns, in accordance with the written commitment provided under paragraph (d)(3)(ii) of this section, shall result in the termination of quiet zone status three years after the date on which the written commitment was received by FRA.

(e) *Notification of termination.* (1) In the event that a quiet zone is terminated under the provisions of this section, it shall be the responsibility of the public authority to immediately provide written notification of the termination by certified mail, return receipt requested, to all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

(2) Notwithstanding paragraph (e)(1) of this section, if a quiet zone is terminated under the provisions of this section, FRA shall also provide written notification to all parties listed in paragraph (e)(1) of this section.

(f) *Requirement to sound the locomotive horn.* Upon receipt of notification of quiet zone termination pursuant to paragraph (e) of this section, railroads shall, within seven days, and in accordance with the provisions of this part, sound the locomotive horn when approaching and passing through every public highway-rail grade crossing within the former quiet zone.

§ 222.53 What are the requirements for supplementary and alternative safety measures?

(a) Approved SSMs are listed in appendix A of this part. Approved SSMs can qualify for quiet zone risk reduction credit in the manner specified in appendix A of this part.

(b) Additional ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b) of this part are listed in appendix B of this part. Modified SSMs can qualify for quiet zone risk reduction credit in the manner specified in appendix B of this part.

(c) The following do not, individually or in combination, constitute SSMs or ASMs: Standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

§ 222.55 How are new supplementary or alternative safety measures approved?

(a) The Associate Administrator may add new SSMs and standards to appendix A of this part and new ASMs and standards to appendix B of this part when the Associate Administrator determines that such measures or standards are an effective substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(b) Interested parties may apply for approval from the Associate Administrator to demonstrate proposed new SSMs or ASMs to determine whether they are effective substitutes for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(c) The Associate Administrator may, after notice and opportunity for comment, order railroad carriers operating over a public highway-rail grade crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs, provided that such proposed new SSMs or ASMs have been subject to prior testing and evaluation. In issuing such order, the Associate Administrator may impose any conditions or limitations on such use of the proposed new SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(d) Upon completion of a demonstration of proposed new SSMs or ASMs, interested parties may apply to the Associate Administrator for their approval. Applications for approval shall be in writing and shall include the following:

(1) The name and address of the applicant;

(2) A description and design of the proposed new SSM or ASM;

(3) A description and results of the demonstration project in which the proposed SSMs or ASMs were tested;

(4) Estimated costs of the proposed new SSM or ASM; and

(5) Any other information deemed necessary.

(e) If the Associate Administrator is satisfied that the proposed safety measure fully compensates for the absence of the warning provided by the locomotive horn, the Associate Administrator will approve its use as an SSM to be used in the same manner as the measures listed in appendix A of this part, or the Associate Administrator may approve its use as an ASM to be used in the same manner as the measures listed in appendix B of this part. The Associate Administrator may impose any conditions or limitations on use of the SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(f) If the Associate Administrator approves a new SSM or ASM, the Associate Administrator will: Notify the applicant, if any; publish notice of such action in the **Federal Register**; and add the measure to the list of approved SSMs or ASMs.

(g) A public authority or other interested party may appeal to the Administrator from a decision by the Associate Administrator granting or denying an application for approval of a proposed SSM or ASM, or the conditions or limitations imposed on its use, in accordance with § 222.57 of this part.

§ 222.57 Can parties seek review of the Associate Administrator's actions?

(a) A public authority or other interested party may petition the Administrator for review of any decision by the Associate Administrator granting or denying an application for approval of a new SSM or ASM under § 222.55 of this part. The petition must be filed within 60 days of the decision to be reviewed, specify the grounds for the requested relief, and be served upon the following parties: All railroads ordered to temporarily cease sounding of the locomotive horn over public highway-rail grade crossings for the demonstration of the proposed new SSM or ASM , the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings affected by the new SSM/ASM demonstration, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. Unless the

Administrator specifically provides otherwise, and gives notice to the petitioner or publishes a notice in the **Federal Register**, the filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

(b) A public authority may request reconsideration of a decision by the Associate Administrator to deny an application by that authority for approval of a quiet zone, or to require additional safety measures, by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for asserting that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would not result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. The petition shall be filed within 60 days of the date of the decision to be reconsidered and be served upon all parties listed in § 222.39(b)(3) of this part. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final.

(c) A public authority may request reconsideration of a decision by the Associate Administrator to terminate quiet zone status by filing a petition for reconsideration with the Associate Administrator. The petition must be filed within 60 days of the date of the decision, specify the grounds for the requested relief, and be served upon all parties listed in § 222.51(c)(2) of this part. Unless the Associate Administrator publishes a notice in the **Federal Register** that specifically stays the effectiveness of his/her decision, the filing of a petition under this paragraph will not stay the termination of quiet zone status. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final. A copy of this decision shall be served upon all parties listed in § 222.51(c)(2) of this part.

(d) A railroad may request reconsideration of a decision by the Associate Administrator to approve an application for approval of a proposed quiet zone under § 222.39(b) of this part by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for asserting that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. The petition shall be filed within 60 days of the date of the decision to be reconsidered, and be served upon all parties listed in § 222.39(b)(3) of this part. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision that will be administratively final.

§ 222.59 When may a wayside horn be used?

(a)(1) A wayside horn conforming to the requirements of appendix E of this part may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates.

(2) A wayside horn conforming to the requirements of appendix E of this part may be installed within a quiet zone. For purposes of calculating the length of a quiet zone, the presence of a wayside horn at a highway-grade crossing within a quiet zone shall be considered in the same manner as a grade crossing treated with an SSM. A grade crossing equipped with a wayside horn shall not be considered in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index.

(b) A public authority installing a wayside horn at a grade crossing within a quiet zone shall provide written notice that a wayside horn is being installed to all railroads operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. This notice shall provide the date on which the wayside horn will be operational and identify the grade crossing at which the wayside horn shall be installed by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The railroad or public authority shall provide notification of the operational date at least 21 days in advance.

(c) A railroad or public authority installing a wayside horn at a grade crossing located outside a quiet zone shall provide written notice that a wayside horn is being installed to all railroads operating over the public highway-rail grade crossing, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossing, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. This notice shall provide the date on which the wayside horn will be operational and identify the grade crossing at which the wayside horn shall be installed by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The railroad or public authority shall provide notification of the operational date at least 21 days in advance.

(d) A railroad operating over a grade crossing equipped with an operational wayside horn installed within a quiet zone pursuant to this section shall cease routine locomotive horn use at the grade crossing. A railroad operating over a grade crossing that is equipped with a wayside horn and located outside of a quiet zone shall cease routine locomotive horn use at the grade crossing on the operational date specified in the notice required by paragraph (c) of this section.

Appendix A to Part 222—Approved Supplementary Safety Measures

A. Requirements and Effectiveness Rates for Supplementary Safety Measures

This section provides a list of approved supplementary safety measures (SSMs) that may be installed at highway-rail grade crossings within quiet zones for risk reduction credit. Each SSM has been assigned an effectiveness rate, which may be subject to adjustment as research and demonstration projects are completed and data is gathered and refined. Sections B and C govern the process through which risk reduction credit for pre-existing SSMs can be determined.

1. *Temporary Closure of a Public Highway-Rail Grade Crossing:* Close the crossing to

highway traffic during designated quiet periods. (This SSM can only be implemented within Partial Quiet Zones.)

Effectiveness: 1.0.

Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would therefore equal 1. However, analysis should take into consideration that traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular ''closure'' was accomplished by a grade separation.

Required:

a. The closure system must completely block highway traffic on all approach lanes to the crossing.

b. The closure system must completely block adjacent pedestrian crossings.

c. Public highway-rail grade crossings located within New Partial Quiet Zones shall be closed from 10 p.m. until 7 a.m. every day. Public highway-rail grade crossings located within Pre-Rule Partial Quiet Zones may only be closed during one period each 24 hours.

d. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

e. Daily activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad tracks. The public authority may provide for third party activation and deactivation; however, the public authority shall remain fully responsible for compliance with the requirements of this part.

f. The system must be tamper and vandal resistant to the same extent as other traffic control devices.

g. The closure system shall be equipped with a monitoring device that contains an indicator which is visible to the train crew prior to entering the crossing. The indicator shall illuminate whenever the closure device is deployed.

Recommended:

Signs for alternate highway traffic routes should be erected in accordance with MUTCD and State and local standards and should inform pedestrians and motorists that the streets are closed, the period for which they are closed, and that alternate routes must be used.

2. *Four-Quadrant Gate System:* Install gates at a crossing sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach.

Effectiveness:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with traffic of at least 60 feet (with or without presence detection): .92.

Note: The higher effectiveness rate for four-quadrant gates without presence detection does not mean that they are inherently safer than four-quadrant gates with presence detection. Four-quadrant gates with presence detection have been assigned a lower effectiveness rate because motorists may learn to delay the lowering of the exit gates by driving onto the opposing lane of traffic immediately after an opposing car has driven over the grade crossing. Since the presence detection will keep the exit gate raised, other motorists at the crossing who observe this scenario may also be tempted to take advantage of the raised exit gate by driving around the lowered entrance gates, thus increasing the potential for a crossing collision.

It should, however, be noted that there are site-specific circumstances (such as nearby highway intersections that could cause traffic to back up and stop on the grade crossing), under which the use of presence detection would be advisable. For this reason, the various effectiveness rates assigned to four-quadrant gate systems should not be the sole determining factor as to whether presence detection would be advisable. A site-specific study should be performed to determine the best application for each proposed installation. Please refer to paragraphs (f) and (g) for more information.

Required:

Four-quadrant gate systems shall conform to the standards for four-quadrant gates contained in the MUTCD and shall, in addition, comply with the following:

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

c. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements b and c apply only to New Quiet Zones or New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. However, if existing automatic warning device systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are renewed, or new automatic warning device systems are installed, power-out indicators and constant warning time devices are required, unless existing conditions at the crossing would prevent the proper operation of the constant warning devices.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

Recommendations for new installations only:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPD should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

3. *Gates With Medians or Channelization Devices:* Install medians or channelization devices on both highway approaches to a public highway-rail grade crossing denying to the highway user the option of circumventing the approach lane gates by switching into the opposing (oncoming) traffic lane and driving around the lowered gates to cross the tracks.

Effectiveness:

Channelization devices—.75.

Non-traversable curbs with or without channelization devices— .80.

Required:

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated.

Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of ''no left turn'' signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority can not comply with the 60 feet or 100 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), ''Public authority application to FRA.'' Such arrangement may qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index. Similarly, if a public authority finds that it is feasible to only provide channelization on one approach to the crossing, it may also apply to FRA for approval under § 222.39(b). Such an arrangement may also qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

e. Crossing warning systems must be equipped with power-out indicators. Note: Requirements d and e apply only to New Quiet Zones and New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones. However, if existing automatic warning device systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are renewed, or new automatic warning device systems are installed, power-out indicators and constant warning time devices are required, unless existing conditions at the crossing would prevent the proper operation of the constant warning devices.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

4. *One Way Street with Gate(s):* Gate(s) must be installed such that all approaching highway lanes to the public highway-rail grade crossing are completely blocked.

Effectiveness: .82.

Required:

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position must be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

d. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements c and d apply only to New Quiet Zones and New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones. If automatic warning systems are, however, installed or renewed in a Pre-Rule Quiet or Pre-Rule Partial Quiet Zone, power-out indicators and constant warning time devices shall be installed, unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

5. *Permanent Closure of a Public Highway-Rail Grade Crossing:* Permanently close the crossing to highway traffic.

Effectiveness: 1.0.

Required:

a. The closure system must completely block highway traffic from entering the grade crossing.

b. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

c. The closure system must be tamper and vandal resistant to the same extent as other traffic control devices.

d. Since traffic will be redistributed among adjacent crossings, the traffic counts for adjacent crossings shall be increased to reflect the diversion of traffic from the closed crossing.

B. Credit for Pre-Existing SSMs in New Quiet Zones and New Partial Quiet Zones

A community that has implemented a pre-existing SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a qualifying, pre-existing SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the SSM effectiveness rate. (For example, the risk index for a crossing equipped with pre-existing channelization devices would be divided by .25.)

3. Add the current risk indices for the other public grade crossings located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the proposed quiet zone.

C. Credit for Pre-Existing SSMs in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones

A community that has implemented a pre-existing SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a qualifying, pre-existing SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Reduce the current risk index for the grade crossing to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at the crossing. The following list sets forth the estimated risk reduction for certain types of crossings:

a. Risk indices for passive crossings shall be reduced by 43%;

b. Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and

c. Risk indices for gated crossings shall be reduced by 40%.

3. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the SSM effectiveness rate. (For example, the risk index for a crossing equipped with pre-existing channelization devices would be divided by .25.)

4. Adjust the risk indices for the other crossings that are included in the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone by reducing the current risk index to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at each crossing. Please refer to step two for the list of approved risk reduction percentages by crossing type.

5. Add the new risk indices for each crossing located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the quiet zone.

Appendix B to Part 222—Alternative Safety Measures

Introduction

A public authority seeking approval of a quiet zone under public authority application to FRA (§ 222.39(b)) may include ASMs listed in this appendix in its proposal. This appendix addresses three types of ASMs: Modified SSMs, Non-Engineering ASMs, and Engineering ASMs. Modified SSMs are SSMs that do not fully comply with the provisions listed in appendix A. As provided in section I.B. of this appendix, public authorities can obtain risk reduction credit for pre-existing modified SSMs under the final rule. Non-engineering ASMs consist of programmed enforcement, public education and awareness, and photo enforcement programs that may be used to reduce risk within a quiet zone. Engineering ASMs consist of engineering improvements that address underlying geometric conditions, including sight distance, that are the source of increased risk at crossings.

I. Modified SSMs

A. Requirements and Effectiveness Rates for Modified SSMs

1. If there are unique circumstances pertaining to a specific crossing or number of

crossings which prevent SSMs from being fully compliant with all of the SSM requirements listed in appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified by the public authority, will be treated as an ASM under this appendix B, and not as a SSM under appendix A. After reviewing the estimated safety effect of the modified SSM and the proposed quiet zone, FRA will approve the proposed quiet zone if FRA finds that the Quiet Zone Risk Index will be reduced to a level at or below either the Risk Index With Horns or the Nationwide Significant Risk Threshold.

2. The public authority must provide estimates of effectiveness. These estimates may be based upon adjustments from the effectiveness levels provided in appendix A or from actual field data derived from the crossing sites. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from experience under the final rule.

3. If one or more of the requirements associated with an SSM as listed in appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s).

B. Credit for Pre-Existing Modified SSMs in New Quiet Zones and New Partial Quiet Zones

A community that has implemented a pre-existing modified SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a pre-existing modified SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Obtain FRA approval of the estimated effectiveness rate for the pre-existing modified SSM. Estimated effectiveness rates may be based upon adjustments from the SSM effectiveness rates provided in appendix A or actual field data derived from crossing sites.

3. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing modified SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the FRA-approved modified SSM effectiveness rate.

4. Add the current risk indices for the other public grade crossings located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the proposed quiet zone.

C. Credit for Pre-Existing Modified SSMs in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones

A community that has implemented a pre-existing modified SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a pre-existing modified SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Reduce the current risk index for the grade crossing to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at the crossing. The following list sets forth the estimated risk reduction for certain types of crossings:

a. Risk indices for passive crossings shall be reduced by 43%;

b. Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and

c. Risk indices for gated crossings shall be reduced by 40%.

3. Obtain FRA approval of the estimated effectiveness rate for the pre-existing modified SSM. Estimated effectiveness rates may be based upon adjustments from the SSM effectiveness rates provided in appendix A or actual field data derived from crossing sites.

4. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing modified SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the FRA-approved modified SSM effectiveness rate.

5. Adjust the risk indices for the other crossings that are included in the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone by reducing the current risk index to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at each crossing. Please refer to step two for the list of approved risk reduction percentages by crossing type.

6. Add the new risk indices for each crossing located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the quiet zone.

II. Non-Engineering ASMs

A. The following non-engineering ASMs may be used in the creation of a Quiet Zone: (The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and dealing with an unacceptable effectiveness rate is provided in paragraph B.)

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness ASM.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort.

c. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A sustainable public education and awareness program must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the public education and awareness effort. This program shall be provided and supported primarily through local resources.

c. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

3. *Photo Enforcement:* This ASM entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Requirements:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law;

b. Sanction includes sufficient minimum fine (e.g., $100 for a first offense, ''points'' toward license suspension or revocation) to deter violations;

c. Means to reliably detect violations (e.g., loop detectors, video imaging technology);

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations,

as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement;

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns;

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

i. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

B. The effectiveness of an ASM will be determined as follows:

1. Establish the quarterly (three months) baseline violation rates for each crossing in the proposed quiet zone.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (e.g., inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: Sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as stated in this paragraph unless FRA authorizes another methodology.

2. The ASM should then be initiated for each crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for each crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Determine the effectiveness rate of the ASM for each crossing by multiplying the violation rate reduction by .78.

6. Using the effectiveness rates for each grade crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a level at, or below, the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the proposed quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

7. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If, after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate that was used to determine the effectiveness rate that was approved by FRA, violation rates may be monitored for one quarter per year.

8. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate is still greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the National Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

III. Engineering ASMs

A. Engineering improvements, other than modified SSMs, may be used in the creation of a Quiet Zone. These engineering improvements, which will be treated as ASMs under this appendix, may include improvements that address underlying geometric conditions, including sight distance, that are the source of increased risk at the crossing.

B. The effectiveness of an Engineering ASM will be determined as follows:

1. Establish the quarterly (three months) baseline violation rate for the crossing at which the Engineering ASM will be applied.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (e.g. inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: Sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as stated in this paragraph unless FRA authorizes another methodology.

2. The Engineering ASM should be initiated at the crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the Engineering ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for the crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Using the Engineering ASM effectiveness rate, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a risk level at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

6. Violation rates must be monitored for the next two calendar quarters. Unless otherwise provided in FRA's notification of quiet zone approval, if the violation rate for these two calendar quarters does not exceed the violation rate that was used to determine the effectiveness rate that was approved by FRA, the public authority can cease violation rate monitoring.

7. In the event that the violation rate over either of the next two calendar quarters are greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for a third calendar quarter. However, if the third calendar quarter violation rate is also greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index exceeds the Risk Index With Horns and the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Appendix C to Part 222—Guide to Establishing Quiet Zones

Introduction

This Guide to Establishing Quiet Zones (Guide) is divided into five sections in order to address the variety of methods and conditions that affect the establishment of quiet zones under this rule.

Section I of the Guide provides an overview of the different ways in which a quiet zone may be established under this rule. This includes a brief discussion on the safety thresholds that must be attained in order for train horns to be silenced and the relative merits of each. It also includes the two general methods that may be used to reduce risk in the proposed quiet zone, and the different impacts that the methods have on the quiet zone implementation process. This section also discusses Partial (e.g. night time only quiet zones) and Intermediate Quiet Zones. An Intermediate Quiet Zone is one where horn restrictions were in place after October 9, 1996, but as of December 18, 2003.

Section II of the Guide provides information on establishing New Quiet Zones. A New Quiet Zone is one at which train horns are currently being sounded at crossings. The Public Authority Designation and Public Authority Application to FRA methods will be discussed in depth.

Section III of the Guide provides information on establishing Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is one where train horns were not routinely sounded as of October 9, 1996 and December 18, 2003. The differences between New and Pre-Rule Quiet Zones will be explained. Public Authority Designation and Public Authority Application to FRA methods also apply to Pre-Rule Quiet Zones.

Section IV of the Guide deals with the required notifications that must be provided by public authorities when establishing both New and continuing Pre-Rule or Intermediate Quiet Zones.

Section V of the Guide provides examples of quiet zone implementation.

Section I—Overview

In order for a quiet zone to be qualified under this rule, it must be shown that the lack of the train horn does not present a significant risk with respect to loss of life or serious personal injury, or that the significant risk has been compensated for by other means. The rule provides four basic ways in which a quiet zone may be established. Creation of both New Quiet Zones and Pre-Rule Quiet Zones are based on the same general guidelines; however, there are a number of differences that will be noted in the discussion on Pre-Rule Quiet Zones.

A. Qualifying Conditions

(1) One of the following four conditions or scenarios must be met in order to show that the lack of the train horn does not present a significant risk, or that the significant risk has been compensated for by other means:

a. One or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone; or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without implementation of additional safety measures at any crossings in the quiet zone; or

c. Additional safety measures are implemented at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold; or

d. Additional safety measures are taken at selected crossings resulting in the Quiet Zone Risk Index being reduced to at least the level of the Risk Index With Horns (that is, the risk that would exist if train horns were sounded at every public crossing in the quiet zone).

(2) It is important to consider the implications of each approach before deciding which one to use. If a quiet zone is qualified based on reference to the Nationwide Significant Risk Threshold (i.e. the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold—see the second and third scenarios above), then an annual review will be done by FRA to determine if the Quiet Zone Risk Index remains equal to, or less than, the Nationwide Significant Risk Threshold. Since the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index may change from year to year, there is no guarantee that the quiet zone will remain qualified. The circumstances that cause the disqualification may not be subject to the control of the public authority. For example, an overall national improvement in safety at gated crossings may cause the Nationwide Significant Risk Threshold to fall. This may cause the Quiet Zone Risk Index to become greater than the Nationwide Significant Risk Threshold. If the quiet zone is no longer qualified, then the public authority will have to take additional measures, and may incur additional costs that might not have been budgeted, to once again lower the Quiet Zone Risk Index to at least the Nationwide Significant Risk Threshold in order to retain the quiet zone. Therefore, while the initial cost to implement a quiet zone under the second or third scenario may be lower than the other options, these scenarios also carry a degree of uncertainty about the quiet zone's continued existence.

(3) The use of the first or fourth scenarios reduces the risk level to at least the level that would exist if train horns were sounding in the quiet zone. These methods may have higher initial costs because more safety measures may be necessary in order to achieve the needed risk reduction. Despite the possibility of greater initial costs, there are several benefits to these methods. The installation of SSMs at every crossing will provide the greatest safety benefit of any of the methods that may be used to initiate a quiet zone. With both of these methods (first and fourth scenarios), the public authority will never need to be concerned about the Nationwide Significant Risk Threshold, annual reviews of the Quiet Zone Risk Index, or failing to be qualified because the Quiet Zone Risk Index is higher than the Nationwide Significant Risk Threshold. Public authorities are strongly encouraged to carefully consider both the pros and cons of all of the methods and to choose the method that will best meet the needs of its citizens by providing a safer and quieter community.

(4) For the purposes of this Guide, the term ''Risk Index with Horns'' is used to represent the level of risk that would exist if train horns were sounded at every public crossing in the proposed quiet zone. If a public authority decides that it would like to fully compensate for the lack of a train horn and not install SSMs at each public crossing in the quiet zone, it must reduce the Quiet Zone Risk Index to a level that is equal to, or less than, the Risk Index with Horns. The Risk Index with Horns is similar to the Nationwide Significant Risk Threshold in that both are targets that must be reached in order to establish a quiet zone under the rule. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Nationwide Significant Risk Threshold will be reviewed annually by FRA to determine if they still qualify under the rule to retain the quiet zone. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Risk Index with Horns will not be subject to annual reviews.

(5) The use of FRA's web-based Quiet Zone Calculator is recommended to aid in the decision making process (*http://www.fra.dot.gov/us/content/1337*). The Quiet Zone Calculator will allow the public authority to consider a variety of options in determining which SSMs make the most sense. It will also perform the necessary calculations used to determine the existing risk level and whether enough risk has been mitigated in order to create a quiet zone under this rule.

B. Risk Reduction Methods

FRA has established two general methods to reduce risk in order to have a quiet zone qualify under this rule. The method chosen impacts the manner in which the quiet zone is implemented.

1. *Public Authority Designation (SSMs)*—The Public Authority Designation method (§ 222.39(a)) involves the use of SSMs (see appendix A) at some or all crossings within the quiet zone. The use of only SSMs to reduce risk will allow a public authority to designate a quiet zone without approval from FRA. If the public authority installs SSMs at every crossing within the quiet zone, it need not demonstrate that they will reduce the risk sufficiently in order to qualify under the rule since FRA has already assessed the ability of

the SSMs to reduce risk. In other words, the Quiet Zone Calculator does not need to be used. However, if only SSMs are installed within the quiet zone, but not at every crossing, the public authority must calculate that sufficient risk reduction will be accomplished by the SSMs. Once the improvements are made, the public authority must make the required notifications (which includes a copy of the report generated by the Quiet Zone Calculator showing that the risk in the quiet zone has been sufficiently reduced), and the quiet zone may be implemented. FRA does not need to approve the plan as it has already assessed the ability of the SSMs to reduce risk.

2. *Public Authority Application to FRA (ASMs)*—The Public Authority Application to FRA method (§ 222.39(b)) involves the use ASMs (see appendix B). ASMs include modified SSMs that do not fully comply with the provisions found in appendix A (e.g., shorter than required traffic channelization devices), non-engineering ASMs (e.g., programmed law enforcement), and engineering ASMs (i.e., engineering improvements other than modified SSMs). If the use of ASMs (or a combination of ASMs and SSMs) is elected to reduce risk, then the public authority must provide a Notice of Intent and then apply to FRA for approval of the quiet zone. The application must contain sufficient data and analysis to confirm that the proposed ASMs do indeed provide the necessary risk reduction. FRA will review the application and will issue a formal approval if it determines that risk is reduced to a level that is necessary in order to comply with the rule. Once FRA approval has been received and the safety measures fully implemented, the public authority would then provide a Notice of Quiet Zone Establishment and the quiet zone may be implemented. The use of non-engineering ASMs will require continued monitoring and analysis throughout the existence of the quiet zone to ensure that risk continues to be reduced.

3. *Calculating Risk Reduction*—The following should be noted when calculating risk reductions in association with the establishment of a quiet zone. This information pertains to both New Quiet Zones and Pre-Rule Quiet Zones and to the Public Authority Designation and Public Authority Application to FRA methods.

Crossing closures: If any public crossing within the quiet zone is proposed to be closed, include that crossing when calculating the Risk Index with Horns. The effectiveness of a closure is 1.0. However, be sure to increase the traffic counts at other crossings within the quiet zone and recalculate the risk indices for those crossings that will handle the traffic diverted from the closed crossing. It should be noted that crossing closures that are already in existence are not considered in the risk calculations.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. A, B and D streets are equipped with flashing lights and gates. C Street is a passive crossbuck crossing with a traffic count of 400 vehicles per day. It is decided that C Street will be closed as part of the project. Compute the risk indices for all four streets. The calculation for C Street will utilize flashing lights and gates as the warning device. Calculate the Crossing Corridor Risk Index by averaging the risk indices for all four of the crossings. This value will also be the Risk Index with Horns since train horns are currently being sounded. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by increasing the traffic count for each crossing by 200. (Assume for this example that the public authority decided that the traffic from C Street would be equally divided between B and D streets.) Increase the risk indices for A, B and D streets by 66.8% and divide the sum of the three remaining crossings by four. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by closing C Street.

Grade Separation: Grade separated crossings that were in existence before the creation of a quiet zone are not included in any of the calculations. However, any public crossings within the quiet zone that are proposed to be treated by grade separation should be treated in the same manner as crossing closures. Highway traffic that may be diverted from other crossings within the quiet zone to the new grade separated crossing should be considered when computing the Quiet Zone Risk Index.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. C Street is a busy crossing with a traffic count of 25,000 vehicles per day. It is decided that C Street will be grade separated as part of the project and the existing at-grade crossing closed. Compute the risk indices for all four streets. Calculate the Crossing Corridor Risk Index, which will also be the Risk Index with Horns, by averaging the risk indices for all four of the crossings. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by decreasing the traffic count for each crossing by 1,200. (The public authority decided that 2,400 motorists will decide to use the grade separation at C Street in order to avoid possible delays caused by passing trains.) Increase the risk indices for A, B and D streets by 66.8% and divide the sum of the three remaining crossings by four. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by the grade separation at C Street.

Pre-Existing SSMs: Risk reduction credit may be taken by a public authority for a SSM that was previously implemented and is currently in place in the quiet zone. If an existing improvement meets the criteria for a SSM as provided in appendix A, the improvement is deemed a Pre-Existing SSM. Risk reduction credit is obtained by inflating the Risk Index With Horns to show what the risk would have been at the crossing if the pre-existing SSM had not been implemented. Crossing closures and grade separations that occurred prior to the implementation of the quiet zone are not Pre-Existing SSMs and do not receive any risk reduction credit.

Example 1—A proposed New Quiet Zone has one crossing that is equipped with flashing lights and gates and has medians 100 feet in length on both sides of the crossing. The medians conform to the requirements in appendix A and qualify as a Pre-Existing SSM. The risk index as calculated for the crossing is 10,000. To calculate the Risk Index With Horns for this crossing, you divide the risk index by difference between one and the effectiveness rate of the pre-existing SSM (10,000 ÷ (1–0.75) = 40,000). This value (40,000) would then be averaged in with the risk indices of the other crossings to determine the proposed quiet zone's Risk Index With Horns. To calculate the Quiet Zone Risk Index, the original risk index is increased by 66.8% to account for the additional risk attributed to the absence of the train horn (10,000 × 1.668 = 16,680). This value (16,680) is then averaged into the risk indices of the other crossings that have also been increased by 66.8%. The resulting average is the Quiet Zone Risk Index.

Example 2—A Pre-Rule Quiet Zone consisting of four crossings has one crossing that is equipped with flashing lights and gates and has medians 100 feet in length on both sides of the crossing. The medians conform to the requirements in appendix A and qualify as a Pre-Existing SSM. The risk index as calculated for the crossing is 20,000. To calculate the Risk Index With Horns for this crossing, first reduce the risk index by 40 percent to reflect the risk reduction that would be achieved if train horns were routinely sounded (20,000 × 0.6 = 12,000). Next, divide the resulting risk index by difference between one and the effectiveness rate of the pre-existing SSM (12,000 ÷ (1 − 0.75) = 48,000). This value (48,000) would then be averaged with the adjusted risk indices of the other crossings to determine the pre-rule quiet zone's Risk Index With Horns. To calculate the Quiet Zone Risk Index, the original risk index (20,000) is then averaged into the risk original indices of the other crossings. The resulting average is the Quiet Zone Risk Index.

Pre-Existing Modified SSMs: Risk reduction credit may be taken by a public authority for a modified SSM that was previously implemented and is currently in place in the quiet zone. Modified SSMs are Alternative Safety Measures which must be approved by FRA. If an existing improvement is approved by FRA as a modified SSM as provided in appendix B, the improvement is deemed a Pre-Existing Modified SSM. Risk reduction credit is obtained by inflating the Risk Index With Horns to show what the risk would have been at the crossing if the pre-existing SSM had not been implemented. The effectiveness rate of the modified SSM will be determined by FRA. The public authority may provide information to FRA to be used in determining the effectiveness rate of the modified SSM. Once an effectiveness rate has been determined, follow the procedure previously discussed for Pre-Existing SSMs to determine the risk values that will be used in the quiet zone calculations.

Wayside Horns: Crossings with wayside horn installations will be treated as a one for one substitute for the train horn and are not to be included when calculating the Crossing Corridor Risk Index, the Risk Index with Horns or the Quiet Zone Risk Index.

Example—A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights

and gates. It is decided that C Street will have a wayside horn installed. Compute the risk indices for A, B and D streets. Since C Street is being treated with a wayside horn, it is not included in the calculation of risk. Calculate the Crossing Corridor Risk Index by averaging the risk indices for A, B and D streets. This value is also the Risk Index with Horns. Increase the risk indices for A, B and D streets by 66.8% and average the results. This is the initial Quiet Zone Risk Index for the proposed quiet zone.

C. Partial Quiet Zones

A Partial Quiet Zone is a quiet zone in which locomotive horns are not routinely sounded at public crossings for a specified period of time each day. For example, a quiet zone during only the nighttime hours would be a partial quiet zone. Partial quiet zones may be either New or Pre-Rule and follow the same rules as 24 hour quiet zones. New Partial Quiet Zones must be in effect during the hours of 10 p.m. to 7 a.m. All New Partial Quiet Zones must comply with all of the requirements for New Quiet Zones. For example, all public grade crossings that are open during the time that horns are silenced must be equipped with flashing lights and gates that are equipped with constant warning time (where practical) and power out indicators. Risk is calculated in exactly the same manner as for New Quiet Zones. The Quiet Zone Risk Index is calculated for the entire 24-hour period, even though the train horn will only be silenced during the hours of 10 p.m. to 7 a.m.

A Pre-Rule Partial Quiet Zone is a partial quiet zone at which train horns were not sounding as of October 9, 1996 and on December 18, 2003. All of the regulations that pertain to Pre-Rule Quiet Zones also pertain to Pre-Rule Partial Quiet Zones. The Quiet Zone Risk Index is calculated for the entire 24-hour period for Pre-Rule Partial Quiet Zones, even though train horns are only silenced during the nighttime hours. Pre-Rule Partial Quiet Zones may qualify for automatic approval in the same manner as Pre-Rule Quiet Zones with one exception. If the Quiet Zone Risk Index is less than twice the National Significant Risk Threshold, and there have been no relevant collisions during the time period when train horns are silenced, then the Pre-Rule Partial Quiet Zone is automatically qualified. In other words, a relevant collision that occurred during the period of time that train horns were sounded will not disqualify a Pre-Rule Partial Quiet Zone that has a Quiet Zone Risk Index that is less than twice the National Significant Risk Index. Pre-Rule Partial Quiet Zones must provide the notification as required in § 222.43 in order to keep train horns silenced. A Pre-Rule Partial Quiet Zone may be converted to a 24 hour New Quiet Zone by complying with all of the New Quiet Zone regulations.

D. Intermediate Quiet Zones

An Intermediate Quiet Zone is one where horn restrictions were in place after October 9, 1996, but as of December 18, 2003 (the publication date of the Interim Final Rule). Intermediate Quiet Zones and Intermediate Partial Quiet Zones will be able to keep train horns silenced until June 24, 2006, provided notification is made per § 222.43. This will enable public authority to have additional time to make the improvement necessary to come into compliance with the rule. Intermediate Quiet Zones must conform to all the requirements for New Quiet Zones by June 24, 2006. Other than having the horn silenced for an additional year, Intermediate Quiet Zones are treated exactly like New Quiet Zones.

Section II—New Quiet Zones

FRA has established several approaches that may be taken in order to establish a New Quiet Zone under this rule. Please see the preceding discussions on ''Qualifying Conditions'' and ''Risk Reduction Methods'' to assist in the decision-making process on which approach to take. This following discussion provides the steps necessary to establish New Quiet Zones and includes both the Public Authority Designation and Public Authority Application to FRA methods. It must be remembered that in a New Quiet Zone all public crossings must be equipped with flashing lights and gates. The requirements are the same regardless of whether a 24-hour or partial quiet zone is being created.

A. Requirements for Both Public Authority Designation and Public Authority Application

The following steps are necessary when establishing a New Quiet Zone. This information pertains to both the Public Authority Designation and Public Authority Application to FRA methods.

1. The public authority must provide a written Notice of Intent (§ 222.43(a)(1) and § 222.43(b)) to the railroads that operate over the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The quiet zone cannot be created unless the Notice of Intent has been provided. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including railroads and State agencies in the inspections of the crossing will help ensure accurate Inventory information for the crossings. The railroad can provide information on whether the flashing lights and gates are equipped with constant warning time and power out indicators. Pedestrian crossings and private crossings with public access, industrial or commercial use that are within the quiet zone must have a diagnostic team review and be treated according to the team's recommendations. Railroads and the State agency responsible for grade crossing safety must be invited to the diagnostic team review. Note: Please see Section IV for details on the requirements of a Notice of Intent.

2. Determine all public, private and pedestrian at-grade crossings that will be included within the quiet zone. Also, determine any existing grade-separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street or highway name. If a crossing does not have a U.S. DOT Crossing Inventory number, then contact FRA's Office of Safety (202–493–6299) for assistance.

3. Ensure that the quiet zone will be at least one-half mile in length. (§ 222.35(a)(1)) If more than one New Quiet Zone or New Partial Quiet Zone will be created within a single political jurisdiction, ensure that each New Quiet Zone or New Partial Quiet Zone will be separated by at least one public highway-rail grade crossing. (§ 222.35(a)(1)(iii))

4. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public, private and pedestrian) within the quiet zone. An inspection of each crossing in the proposed quiet zone should be performed and the Grade Crossing Inventory Forms updated, as necessary, to reflect the current conditions at each crossing.

5. Every public crossing within the quiet zone must be equipped with active warning devices comprising both flashing lights and gates. The warning devices must be equipped with power out indicators. Constant warning time circuitry is also required unless existing conditions would prevent the proper operation of the constant warning time circuitry. FRA recommends that these automatic warning devices also be equipped with at least one bell to provide an audible warning to pedestrians. If the warning devices are already equipped with a bell (or bells), the bells may not be removed or deactivated. The plans for the quiet zone may be made assuming that flashing lights and gates are at all public crossings; however the quiet zone may not be implemented until all public crossings are actually equipped with the flashing lights and gates. (§§ 222.35(b)(1) and 222.35(b)(2))

6. Private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations. The public authority must invite the State agency responsible for grade crossing safety and all affected railroads to participate in the diagnostic review. (§§ 222.25(b) and (c))

7. Each highway approach to every public and private crossing must have an advance warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing, unless the public or private crossing is equipped with a wayside horn. (§ 222.35(c))

8. Each pedestrian crossing must be reviewed by a diagnostic team and equipped or treated in accordance with the recommendation of the diagnostic team. The public authority must invite the State agency responsible for grade crossing safety and all

affected railroads to participate in the diagnostic review. At a minimum, each approach to every pedestrian crossing must be equipped with a sign that conforms to the MUTCD and advises pedestrians that train horns are not sounded at the crossing. (§ 222.27)

B. New Quiet Zones—Public Authority Designation

Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b). In addition, one of the following conditions must be met in order for a public authority to designate a new quiet zone without FRA approval:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone (§ 222.39(a)(1)); or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without SSMs installed at any crossings in the quiet zone (§ 222.39(a)(2)(i)); or

c. SSMs are installed at selected crossings, resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold (§ 222.39(a)(2)(ii)); or

d. SSMs are installed at selected crossings, resulting in the Quiet Zone Risk Index being reduced to a level of risk that would exist if the horn were sounded at every crossing in the quiet zone (i.e., the Risk Index with Horns) (§ 222.39(a)(3)).

Steps necessary to establish a New Quiet Zone using the Public Authority Application to FRA method:

1. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the requirements for a public authority designation quiet zone will have been met. It is not necessary for the same SSM to be used at each crossing. However, before any improvements are implemented, the public authority must provide a Notice of Intent, which will trigger a 60-day comment period. During the 60-day comment period, railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may submit comments on the proposed quiet zone improvements to the public authority. Once the necessary improvements have been installed, Notice of Quiet Zone Establishment shall be provided and the quiet zone implemented in accordance with the rule. If SSMs are not installed at each public crossing, proceed on to Step 2 and use the risk reduction method.

2. To begin, calculate the risk index for each public crossing within the quiet zone (See appendix D. FRA's web-based Quiet Zone Calculator may be used to do this calculation). If flashing lights and gates have to be installed at any public crossings, calculate the risk indices for such crossings as if lights and gates were installed. (**Note:** Flashing lights and gates must be installed prior to initiation of the quiet zone.) If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index. Note: Private crossings and pedestrian crossings are not included when computing the risk for the proposed quiet zone.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are routinely being sounded for crossings in the proposed quiet zone, this value is also the Risk Index with Horns.

4. In order to calculate the initial Quiet Zone Risk Index, first adjust the risk index at each public crossing to account for the increased risk due to the absence of the train horn. The absence of the horn is reflected by an increased risk index of 66.8% at gated crossings. The initial Quiet Zone Risk Index is then calculated by averaging the increased risk index for each public crossing within the proposed quiet zone. At this point the Quiet Zone Risk Index will equal the Risk Index with Horns multiplied by 1.668.

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the public authority may decide to designate a quiet zone and provide the Notice of Intent, followed by the Notice of Quiet Zone Establishment. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the Public Authority so that appropriate measures can be taken. (See § 222.51(a)).

6. If the Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold, then select an appropriate SSM for a crossing. Reduce the inflated risk index calculated in Step 4 for that crossing by the effectiveness rate of the chosen SSM. (See appendix A for the effectiveness rates for the various SSMs). Recalculate the Quiet Zone Risk Index by averaging the revised inflated risk index with the inflated risk indices for the other public crossings. If this new Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, the quiet zone would qualify for public authority designation. If the Quiet Zone Risk Index is still higher than the Nationwide Significant Risk Threshold, treat another public crossing with an appropriate SSM and repeat the process until the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold. Once this result is obtained, the quiet zone will qualify for establishment by public authority designation. Early in the quiet zone development process, a Notice of Intent should be provided by the public authority, which will trigger a 60-day comment period. During this 60-day comment period, railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may provide comments on the proposed quiet zone improvements described in the Notice of Intent. Once all the necessary safety improvements have been implemented, Notice of Quiet Zone Establishment must be provided. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (See § 222.51(a)).

7. If the public authority wishes to reduce the risk of the quiet zone to the level of risk that would exist if the horn were sounded at every crossing within the quiet zone, the public authority should calculate the initial Quiet Zone Risk Index as in Step 4. The objective is to now reduce the Quiet Zone Risk Index to the level of the Risk Index with Horns by adding SSMs at the crossings. The difference between the Quiet Zone Risk Index and the Risk Index with Horns is the amount of risk that will have to be reduced in order to fully compensate for lack of the train horn. The use of the Quiet Zone Calculator will aid in determining which SSMs may be used to reduce the risk sufficiently. Follow the procedure stated in Step 6, except that the Quiet Zone Risk Index must be equal to, or less than, the Risk Index with Horns instead of the Nationwide Significant Risk Threshold. Once this risk level is attained, the quiet zone will qualify for establishment by public authority designation. Early in the quiet zone development process, a Notice of Intent should be provided by the public authority, which will trigger a 60-day comment period. During this 60-day comment period, railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may provide comments on the proposed quiet zone improvements described in the Notice of Intent. Once all the necessary safety improvements have been implemented, Notice of Quiet Zone Establishment must be provided. One important distinction with this option is that the public authority will never need to be concerned with the Nationwide Significant Risk Threshold or the Quiet Zone Risk Index. The rule's intent is to make the quiet zone as safe as if the train horns were sounding. If this is accomplished, the public authority may designate the crossings as a quiet zone and need not be concerned with possible fluctuations in the Nationwide Significant Risk Threshold or annual risk reviews.

C. New Quiet Zones—Public Authority Application to FRA

A public authority must apply to FRA for approval of a quiet zone under three conditions. First, if any of the SSMs selected for the quiet zone do not fully conform to the design standards set forth in appendix A. These are referred to as modified SSMs in appendix B. Second, when programmed law enforcement, public education and awareness programs, or photo enforcement is used to reduce risk in the quiet zone, these are referred to as non-engineering ASMs in appendix B. It should be remembered that non-engineering ASMs will require periodic monitoring as long as the quiet zone is in existence. Third, when engineering ASMs are used to reduce risk. Please see appendix B for detailed explanations of ASMs and the periodic monitoring of non-engineering ASMs.

The public authority is strongly encouraged to submit the application to FRA for review and comment before the appendix B treatments are initiated. This will enable FRA to provide comments on the proposed ASMs to help guide the application process. If non-engineering ASMs or engineering ASMs are proposed, the public authority also may wish to confirm with FRA that the methodology it plans to use to determine the effectiveness rates of the proposed ASMs is appropriate. A quiet zone that utilizes a combination of SSMs from appendix A and ASMs from appendix B must make a Public Authority Application to FRA. A complete and thoroughly documented application will help to expedite the approval process.

The following discussion is meant to provide guidance on the steps necessary to establish a new quiet zone using the Public Authority Application to FRA method. Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b).

1. Gather the information previously mentioned in the section on ''Requirements for both Public Authority Designation and Public Authority Application.''

2. Calculate the risk index for each public crossing as directed in Step 2—Public Authority Designation.

3. Calculate the Crossing Corridor Risk Index, which is also the Risk Index with Horns, as directed in Step 3—Public Authority Designation.

4. Calculate the initial Quiet Zone Risk Index as directed in Step 4—Public Authority Designation.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and SSMs. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. (Remember that the public authority may choose which level of risk reduction is the most appropriate for its community.) Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be based upon adjustments from the effectiveness rates provided in appendix A or from actual field data derived from the crossing sites. The application must provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph II B.

c. Engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph III B.

6. Once it has been determined through analysis that the Quiet Zone Risk Index will be reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority must provide a Notice of Intent. The mailing of the Notice of Intent will trigger a 60-day comment period, during which railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may provide comments on the proposed quiet zone improvements. After reviewing any comments received, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at all crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms for each public, private, and pedestrian grade crossing.

b. Detailed information on the safety improvements that are proposed to be implemented at public, private and pedestrian grade crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. Statement of efforts taken to address comments submitted by affected railroads, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, including a list of any objections raised by the railroads or State agencies.

e. A commitment to implement the proposed safety measures.

f. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

g. A copy of the application must be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. (§ 222.39(b)(3))

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then provide the Notice of Quiet Zone Establishment and implement the quiet zone. If the quiet zone is qualified by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (See § 222.51(a))

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

Section III—Pre-Rule Quiet Zones

Pre-Rule Quiet Zones are treated slightly differently from New Quiet Zones in the rule. This is a reflection of the statutory requirement to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings. * * *'' (49 U.S.C. 20153(i)) It also recognizes the historical experience of train horns not being sounded at Pre-Rule Quiet Zones.

Overview

Pre-Rule Quiet Zones that are not established by automatic approval (see discussion that follows) must meet the same requirements as New Quiet Zones as provided in § 222.39. In other words, risk must be reduced through the use of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or to a risk level equal to, or less than, the Nationwide Significant Risk Threshold. There are four differences in the requirements between Pre-Rule Quiet Zones and New Quiet Zones that must be noted.

(1) First, since train horns have not been routinely sounded in the Pre-Rule Quiet Zone, it is not necessary to increase the risk indices of the public crossings to reflect the additional risk caused by the lack of a train horn. Since the train horn has already been silenced, the added risk caused by the lack of a horn is reflected in the actual collision history at the crossings. Collision history is an important part in the calculation of the severity risk indices. In other words, the Quiet Zone Risk Index is calculated by averaging the existing risk index for each public crossing without the need to increase the risk index by 66.8%. For Pre-Rule Quiet Zones, the Crossing Corridor Risk Index and the initial Quiet Zone Risk Index have the same value.

(2) Second, since train horns have been silenced at the crossings, it will be necessary to mathematically determine what the risk level would have been at the crossings if train horns had been routinely sounded. These revised risk levels then will be used to calculate the Risk Index with Horns. This calculation is necessary to determine how much risk must be eliminated in order to compensate for the lack of the train horn. This will allow the public authority to have the choice to reduce the risk to at least the level of the Nationwide Significant Risk Threshold or to fully compensate for the lack of the train horn.

To calculate the Risk Index with Horns, the first step is to divide the existing severity risk index for each crossing by the appropriate value as shown in Table 1. This process eliminates the risk that was caused by the absence of train horns. The table takes into account that the train horn has been found to produce different levels of effectiveness in preventing collisions depending on the type of warning device at the crossing. (Note: FRA's web-based Quiet Zone Calculator will perform this computation automatically for Pre-Rule Quiet Zones.) The Risk Index with Horns is the average of the revised risk

indices. The difference between the calculated Risk Index with Horns and the Quiet Zone Risk Index is the amount of risk that would have to be reduced in order to fully compensate for the lack of train horns.

TABLE 1.—RISK INDEX DIVISOR VALUES

	Passive	Flashing lights	Lights & gates
U.S	1.749	1.309	1.668

(3) The third difference is that credit is given for the risk reduction that is brought about through the upgrading of the warning devices at public crossings (§ 222.35(b)(3)). For New Quiet Zones, all crossings must be equipped with automatic warning devices consisting of flashing lights and gates. Crossings without gates must have gates installed. The severity risk index for that crossing is then calculated to establish the risk index that is used in the Risk Index with Horns. The Risk Index with Horns is then increased by 66.8% to adjust for the lack of the train horn. The adjusted figure is the initial Quiet Zone Risk Index. There is no credit received for the risk reduction that is attributable to warning device upgrades in New Quiet Zones.

For Pre-Rule Quiet Zones, the Risk Index with Horns is calculated from the initial risk indices which use the warning devices that are currently installed. If a public authority elects to upgrade an existing warning device as part of its quiet zone plan, the accident prediction value for that crossing will be re-calculated based on the upgraded warning device. (Once again, FRA's web-based Quiet Zone Calculator can do the actual computation.) The new accident prediction value is then used in the severity risk index formula to determine the risk index for the crossing. This adjusted risk index is then used to compute the new Quiet Zone Risk Index. This computation allows the risk reduction attributed to the warning device upgrades to be used in establishing a quiet zone.

(4) The fourth difference is that Pre-Rule Quiet Zones have different minimum requirements under § 222.35. A Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996 (§ 222.35(a)(2)). A Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing (§ 222.35(b)(3)). The existing crossing safety warning systems in place as of December 18, 2003 may be retained but cannot be downgraded. It also is not necessary for the automatic warning devices to be equipped with constant warning time devices or power out indicators; however, when the warning devices are upgraded, constant warning time and power out indicators will be required if reasonably practical (§ 222.35(b)(3)). Advance warning signs that notify the motorist that train horns are not sounded do not have to be installed on each approach to public, private, and pedestrian grade crossings within the quiet zone until June 24, 2008. (§§ 222.27(d) and 222.35(c)) Similarly, STOP signs and crossbucks do not have to be installed on each approach to private crossings within the quiet zone until June 24, 2008. (§ 222.25(c)).

A. Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones

The following is necessary when establishing a Pre-Rule Quiet Zone. This information pertains to Automatic Approval, the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public, private and pedestrian at-grade crossings that will be included within the quiet zone. Also determine any existing grade separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street name. If a crossing does not have a U.S. DOT crossing number, then contact FRA for assistance.

2. Document the length of the quiet zone. It is not necessary that the quiet zone be at least one-half mile in length. Pre-Rule Quiet Zones may be shorter than one-half mile. However, the addition of a new crossing that is not a part of an existing Pre-Rule Quiet Zone to a quiet zone nullifies its pre-rule status, and the resulting New Quiet Zone must be at least one-half mile. The deletion of a crossing from a Pre-Rule Quiet Zone (except through closure or grade separation) must result in a quiet zone that is at least one-half mile in length. It is the intent of the rule to allow adjacent Pre-Rule Quiet Zones to be combined into one large pre-rule quiet zone if the respective public authorities desire to do so. (§ 222.35(a)(2))

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public, private and pedestrian) within the quiet zone. An inspection of each crossing in the proposed quiet zone should be performed and the Grade Crossing Inventory Forms updated, as necessary, to reflect the current conditions at each crossing.

4. Pre-Rule Quiet Zones must retain, and may upgrade, the existing grade crossing safety warning systems. Unlike New Quiet Zones, it is not necessary that every public crossing within a Pre-Rule Quiet Zone be equipped with active warning devices comprising both flashing lights and gates. Existing warning devices need not be equipped with power out indicators and constant warning time circuitry. If warning devices are upgraded to flashing lights, or flashing lights and gates, the upgraded equipment must include, as is required for New Quiet Zones, power out indicators and constant warning time devices (if reasonably practical). (§ 222.35(b)(3))

5. By June 24, 2008, private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. (§ 222.25(c))

6. By June 24, 2008, each approach to a public, private, and pedestrian crossing must be equipped with an advance warning sign that conforms to the MUTCD and advises pedestrians and motorists that train horns are not sounded at the crossing. (§§ 222.27(d), 222.35(c))

7. It will be necessary for the public authority to provide a Notice of Quiet Zone Continuation in order to prevent the resumption of locomotive horn sounding when the rule becomes effective. A detailed discussion of the requirements of § 222.43(c) is provided in Section IV of this appendix. The Notice of Quiet Zone Continuation must be provided to the appropriate parties by all Pre-Rule Quiet Zones that have not established quiet zones by automatic approval. This should be done no later than June 3, 2005 to ensure that train horns will not start being sounded on June 24, 2005. A Pre-Rule Quiet Zone may provide a Notice of Quiet Zone Continuation before it has determined whether or not it qualifies for automatic approval. Once it has been determined that the Pre-Rule Quiet Zone will be established by automatic approval, the Public Authority must provide the Notice of Quiet Zone Establishment. This must be accomplished no later than December 24, 2005. If the Pre-Rule Quiet Zone will not be established by automatic approval, the Notice of Quiet Zone Continuation will enable the train horns to be silenced until June 24, 2008. (Please refer to § 222.41(c) for more information.)

B. Pre-Rule Quiet Zones—Automatic Approval

In order for a Pre-Rule Quiet Zone to be established under this rule (§ 222.41(a)), one of the following conditions must be met:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone;

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold;

c. The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years; or

d. The Quiet Zone Risk Index is equal to, or less than, the Risk Index With Horns.

Additionally, the Pre-Rule Quiet Zone must be in compliance with the minimum requirements for quiet zones (§ 222.35) and the notification requirements in § 222.43.

The following discussion is meant to provide guidance on the steps necessary to determine if a Pre-Rule Quiet Zone qualifies for automatic approval.

1. All of the items listed in *Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones* previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the quiet zone qualifies and the public authority may provide the Notice of Quiet Zone Establishment. If the Pre-Rule Quiet Zone does not qualify by this step, proceed on to the next step.

3. Calculate the risk index for each public crossing within the quiet zone (See appendix

D.) Be sure that the risk index is calculated using the formula appropriate for the type of warning device that is actually installed at the crossing. Unlike New Quiet Zones, it is not necessary to calculate the risk index using flashing lights and gates as the warning device at every public crossing. (FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Quiet Zone Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. (Note: The initial Quiet Zone Risk Index and the Crossing Corridor Risk Index are the same for Pre-Rule Quiet Zones.)

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the quiet zone qualifies, and the public authority may provide the Notice of Quiet Zone Establishment. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is found to be above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)). If the Pre-Rule Quiet Zone is not established by this step, proceed on to the next step.

6. If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years, then the quiet zone qualifies for automatic approval. However, in order to qualify on this basis, the public authority must provide a Notice of Quiet Zone Establishment by December 24, 2005. (Note: A relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car.) With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above two times the Nationwide Significant Risk Threshold, or a relevant collision has occurred during the preceding year, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

If the Pre-Rule Quiet Zone is not established by automatic approval, continuation of the quiet zone may require implementation of SSMs or ASMs to reduce the Quiet Zone Risk Index for the quiet zone to a risk level equal to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or the Nationwide Significant Risk Threshold. This is the same methodology used to create New Quiet Zones with the exception of the four differences previously noted. A review of the previous discussion on the two methods used to establish quiet zones may prove helpful in determining which would be the most beneficial to use for a particular Pre-Rule Quiet Zone.

C. Pre-Rule Quiet Zones—Public Authority Designation

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet Zone using the Public Authority Designation method.

1. The public authority must provide a Notice of Intent (§§ 222.43(a)(1) and 222.43(b)) to the railroads that operate within the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. This notice must be mailed by February 24, 2008, in order to continue existing locomotive horn restrictions beyond June 24, 2008 without interruption. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The Notice of Intent must be provided, if new SSMs or ASMs will be implemented within the quiet zone. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including them in the inspections of the crossing will help ensure accurate Inventory information for the crossings. Note: Please see Section IV for details on the requirements of a Notice of Intent.

2. All of the items listed in ''Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

3. Calculate the risk index for each public crossing within the quiet zone as in Step 3—Pre-Rule Quiet Zones—Automatic Approval.

4. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

5. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide the risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

6. Begin to reduce the Quiet Zone Risk Index through the use of SSMs or by upgrading existing warning devices. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. This new risk index is then used to compute the new Quiet Zone Risk Index. (Remember that FRA's web-based Quiet Zone Calculator will be able to do the actual computations.) Once the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the quiet zone may be established by the Public Authority Designation method, and the public authority may provide the Notice of Quiet Zone Establishment once all the necessary improvements have been installed. If the quiet zone is established by reducing the Quiet Zone Risk Index to a risk level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

7. If the Pre-Rule Quiet Zone will not be established before June 24, 2008, the public authority must file a detailed plan for quiet zone improvements with the Associate Administrator by June 24, 2008. By providing a Notice of Intent (see Step 1 above) and a detailed plan for quiet zone improvements, existing locomotive horn restrictions may continue until June 24, 2010. (If a comprehensive State-wide implementation plan and funding commitment are also provided and safety improvements are initiated within at least one Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, existing locomotive horn restrictions may continue until June 24, 2013.) (See § 222.41(c) for more information.)

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

D. Pre-Rule Quiet Zones—Public Authority Application to FRA

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet Zone using the Public Authority Application to FRA method.

1. The public authority must provide a Notice of Intent (§§ 222.43(a)(1) and 222.43(b)) to the railroads that operate within the proposed quiet zone, the State agency

responsible for highway and road safety and the State agency responsible for grade crossing safety. This notice must be mailed by February 24, 2008, in order to continue existing locomotive horn restrictions beyond June 24, 2008 without interruption. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The Notice of Intent must be provided, if new SSMs or ASMs will be implemented within the quiet zone. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including them in the inspections of the crossing will help ensure accurate Inventory information for the crossings. Note: Please see Section IV for details on the requirements of a Notice of Detailed Plan.

2. All of the items listed in ''Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

3. Calculate the risk index for each public crossing within the quiet zone (See appendix D. FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

5. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide its risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

6. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and/or SSMs. Follow the procedure provided in Step 6—New Quiet Zones Public Authority Designation—until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. (Remember that FRA's web-based quiet zone risk calculator will be able to do the actual computations.) This new risk index is then used to compute the new Quiet Zone Risk Index. Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be based upon adjustments from the benchmark levels provided in appendix A or from actual field data derived from the crossing sites. The application must provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, section II B.

c. Engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, section III B.

7. Once it has been determined through analysis that the Quiet Zone Risk Index will be reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, it should be remembered that the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at all crossings within the proposed quiet zone to enable the Associate Administrator to evaluate their effectiveness. This includes current and accurate crossing Inventory forms for each public, private and pedestrian grade crossing.

b. Detailed information on the safety improvements, including upgraded warning devices that are proposed to be implemented at public, private, and pedestrian grade crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. Statement of efforts taken to address comments submitted by affected railroads, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, including a list of any objections raised by the railroads or State agencies.

e. A commitment to implement the proposed safety measures.

f. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to a level at, or below, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

g. A copy of the application must be provided to all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. (§ 222.39(b)(3))

8. Upon receiving written approval from FRA of the quiet zone application, the public authority may then provide the Notice of Quiet Zone Establishment and implement the quiet zone. If the quiet zone is established by reducing the Quiet Zone Risk Index to a level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

Section IV—Required Notifications

A. Introduction

The public authority is responsible for providing notification to parties that will be affected by the quiet zone. There are several different types of notifications and a public authority may have to make more than one notification during the entire process of complying with the regulation. The notification process is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones. It will also provide an opportunity for State agencies and affected railroads to provide input to the public authority during the development of quiet zones. Specific information is to be provided so that the crossings in the quiet zone can be identified. Providing the appropriate notification is important because once the rule becomes effective, railroads will be obligated to sound train horns when approaching all public crossings unless notified in accordance with the rule that a New Quiet Zone has been established or that a Pre-Rule or Intermediate Quiet Zone is being continued.

B. Notice of Intent—§ 222.43(b)

The purpose of the Notice of Intent is to provide notice to the railroads and State agencies that the public authority is planning on creating a New Quiet Zone or implementing new SSMs or ASMs within a Pre-Rule Quiet Zone. The Notice of Intent provides an opportunity for the railroad and the State agencies to give input to the public authority during the quiet zone development process. The State agencies and railroads will be given sixty days to provide information and comments to the public agency.

The Notice of Intent must be provided under the following circumstances:

1. A New Quiet Zone or New Partial Quiet Zone is under consideration.

2. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone that will be converted into a New Quiet Zone or New

Partial Quiet Zone. Please note that Notice of Intent must be mailed by April 3, 2006, in order prevent the resumption of locomotive horn sounding on June 24, 2006.

3. The implementation of SSMs or ASMs within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone is under consideration. Please note that Notice of Intent must be mailed by February 24, 2008, in order to continue existing restrictions on locomotive horn sounding beyond June 24, 2008 without interruption. Each public authority that is creating a New Quiet Zone must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating within the proposed quiet zone

2. State agency responsible for highway and road safety

3. State agency responsible for grade crossing safety

The Notice of Intent must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossings within the proposed quiet zone. The crossings are to be identified by both the U.S. DOT Crossing Inventory Number and the street or highway name.

2. A statement of the time period within which the restrictions would be in effect on the routine sounding of train horns (*i.e.,* 24 hours or from 10 p.m. to 7 a.m.).

3. A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

4. The name and title of the person who will act as the point of contact during the quiet zone development process and how that person can be contacted.

5. A list of the names and addresses of each party that will receive a copy of the Notice of Intent.

The parties that receive the Notice of Intent will be able to submit information or comments to the public authority for 60 days. The public authority will not be able to establish the quiet zone during the 60 day comment period unless each railroad and State agency that receives the Notice of Intent provides either written comments to the public authority or a written statement waiving its right to provide comments on the Notice of Intent. The public authority must provide an affirmation in the Notice of Quiet Zone Establishment that each of the required parties was provided the Notice of Intent and the date it was mailed. If the quiet zone is being established within 60 days of the mailing of the Notice of Intent, the public authority also must affirm each of the parties have provided written comments or waived its right to provide comments on the Notice of Intent.

C. Notice of Quiet Zone Continuation—§ 222.43(c)

The purpose of the Notice of Quiet Zone Continuation is to provide a means for the public authority to formally advise affected parties that an existing quiet zone is being continued after the effective date of the rule. All Pre-Rule, Pre-Rule Partial, Intermediate and Intermediate Partial Quiet Zones must provide this Notice of Quiet Zone Continuation no later than June 3, 2005 to ensure that train horns are not sounded at public crossings when the rule becomes effective on June 24, 2005. This will enable railroads to properly comply with the requirements of the Final Rule.

Each public authority that is continuing an existing Pre-Rule, Pre-Rule Partial, Intermediate and Intermediate Partial Quiet Zone must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating over the public highway-rail grade crossings within the quiet zone;

2. The highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone;

3. The landowner having control over any private crossings within the quiet zone;

4. The State agency responsible for highway and road safety;

5. The State agency responsible for grade crossing safety; and

6. The Associate Administrator.

The Notice of Quiet Zone Continuation must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

2. A specific reference to the regulatory provision that provides the basis for quiet zone continuation, citing as appropriate, § 222.41 or 222.42.

3. A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or nighttime hours only.)

4. An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects conditions currently existing at the crossing.

5. The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

6. A list of the names and addresses of each party that will receive the Notice of Quiet Zone Continuation.

7. A statement signed by the chief executive officer of each public authority participating in the continuation of the quiet zone, in which the chief executive officer certifies that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Public authorities should remember that this notice is required to ensure that train horns will remain silent. Even if a public authority has not been able to determine whether its Pre-Rule or Pre-Rule Partial Quiet Zone qualifies for automatic approval under the rule, it should issue a Notice of Quiet Zone Continuation to keep the train horns silent after the effective date of the rule.

E. Notice of Quiet Zone Establishment—§ 222.43(d)

The purpose of the Notice of Quiet Zone Establishment is to provide a means for the public authority to formally advise affected parties that a quiet zone is being established. Notice of Quiet Zone Establishment must be provided under the following circumstances:

1. A New Quiet Zone or New Partial Quiet Zone is being created.

2. A Pre-Rule Quiet Zone or a Pre-Rule Partial Quiet Zone that qualifies for automatic approval under the rule is being established.

3. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone that is creating a New Quiet Zone under the rule. Please note that Notice of Quiet Zone Establishment must be provided by June 3, 2006, in order to prevent the resumption of locomotive horn sounding on June 24, 2006.

4. A Pre-Rule Quiet Zone or a Pre-Rule Partial Quiet Zone that was not established by automatic approval and has since implemented improvements to establish a quiet zone in accordance to the rule.

Each public authority that is establishing a quiet zone under the above circumstances must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating over the public highway-rail grade crossings within the quiet zone;

2. The highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone;

3. The landowner having control over any private crossings within the quiet zone;

4. The State agency responsible for highway and road safety;

5. The State agency responsible for grade crossing safety; and

6. The Associate Administrator.

The Notice of Quiet Establishment must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

2. A specific reference to the regulatory provision that provides the basis for quiet zone establishment, citing as appropriate, § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), 222.41(a)(1)(i), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(i), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv).

(a) If the Notice of Quiet Establishment contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv), it shall include a copy of the FRA web page that contains the quiet zone data upon which the public authority is relying.

(b) If the Notice of Quiet Establishment contains a specific reference to § 222.39(b), it shall include a copy of FRA's notification of approval.

3. If a diagnostic team review was required under § 222.25 (private crossings) or § 222.27 (pedestrian crossings), the Notice of Quiet Establishment shall include a statement affirming that the State agency responsible

for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice of Quiet Establishment shall also include a list of recommendations made by the diagnostic team.

4. A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or from 10 p.m. until 7 a.m.)

5. An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented.

6. An accurate, complete and current Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described.

7. If the public authority was required to provide a Notice of Intent:

(a) The Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Intent was provided in accordance with the rule. This statement shall also state the date on which the Notice of Intent was mailed.

(b) If the Notice of Quiet Zone Establishment will be mailed less than 60 days after the date on which the Notice of Intent was mailed, the Notice of Quiet Zone Establishment shall also contain a written statement affirming that comments and/or written waiver statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety.

8. The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

9. A list of the names and addresses of each party that is receiving a copy of the Notice of Quiet Establishment.

10. A statement signed by the chief executive officer of each public authority participating in the establishment of the quiet zone, in which the chief executive officer shall certify that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Section V—Examples of Quiet Zone Implementations

Example 1—New Quiet Zone

(a) A public authority wishes to create a New Quiet Zone over four public crossings. All of the crossings are equipped with flashing lights and gates, and the length of the quiet zone is 0.75 mile. There are no private crossings within the proposed zone.

(b) The tables that follow show the street name in the first column, and the existing risk index for each crossing with the horn sounding (''Crossing Risk Index w/ Horns'') in the second. The third column, ''Crossing Risk Index w/o Horns'', is the risk index for each crossing after it has been inflated by 66.8% to account for the lack of train horns. The fourth column, ''SSM Eff'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the inflated risk index for the crossing after being reduced by the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (''RIWH'') which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI''), which is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and the reductions in risk attributable to the installation of SSMs. For this example it is assumed that the Nationwide Significant Risk Threshold is 17,030. In order for the proposed quiet zone to qualify under the rule, the Quiet Zone Risk Index must be reduced to a level at, or below, the Nationwide Significant Risk Threshold (17,030) or the Risk Index with Horns.

(c) Table 2 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 11,250. The Quiet Zone Risk Index without any SSMs is 18,765.

TABLE 2

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0	25020
	RIWH			QZRI
	11250			18765

(d) The public authority decides to install traffic channelization devices at D Street. Reducing the risk at the crossing that has the highest severity risk index will provide the greatest reduction in risk. The effectiveness of traffic channelization devices is 0.75. Table 3 shows the changes in the proposed quiet zone corridor that would occur when traffic channelization devices are installed at D Street. The Quiet Zone Risk Index has been reduced to 14,073.75. This reduction in risk would qualify the quiet zone as the risk has been reduced lower than the Nationwide Significant Risk Threshold which is 17,030.

TABLE 3

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH			QZRI
	11250			14073.75

(e) The public authority realizes that reducing the Quiet Zone Risk Index to a level below the Nationwide Significant Risk Threshold will result in an annual re-calculation of the Quiet Zone Risk Index and comparison to the Nationwide Significant Risk Threshold. As the Quiet Zone Risk Index is close to the Nationwide Significant Risk Threshold (14,074 to 17,030), there is a reasonable chance that the Quiet Zone Risk Index may some day exceed the Nationwide Significant Risk Threshold. This would result in the quiet zone no longer being qualified and additional steps would have to be taken to keep the quiet zone. Therefore, the public authority decides to reduce the risk further by the use of traffic channelization devices at A Street. Table 4 shows the results of this change. The Quiet Zone Risk Index is now 10,320.75 which is less than the Risk Index with Horns of 11,250. The quiet zone now qualifies by fully compensating for the loss of train horns and will not have to undergo annual reviews of the Quiet Zone Risk Index.

TABLE 4

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0.75	5004
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH			QZRI
	11250			10320.75

Example 2—Pre-Rule Quiet Zone

(a) A public authority wishes to qualify a Pre-Rule Quiet Zone which did not meet the requirements for Automatic Approval because the Quiet Zone Risk Index is greater than twice the Nationwide Significant Risk Threshold. There are four public crossings in the Pre-Rule Quiet Zone. Three of the crossings are equipped with flashing lights and gates, and the fourth (Z Street) is passively signed with a STOP sign. The length of the quiet zone is 0.6 mile, and there are no private crossings within the proposed zone.

(b) The tables that follow are very similar to the tables in Example 1. The street name is shown in the first column, and the existing risk index for each crossing (''Crossing Risk Index w/o Horns'') in the second. This is a change from the first example because the risk is calculated without train horns sounding because of the existing ban on whistles. The third column, ''Crossing Risk Index w/ Horns'', is the risk index for each crossing after it has been adjusted to reflect what the risk would have been had train horns been sounding. This is mathematically done by dividing the existing risk index for the three gated crossing by 1.668. The risk at the passive crossing at Z Street is divided by 1.749. (See the above discussion in ''Pre-Rule Quiet Zones—Establishment Overview'' for more information.) The fourth column, ''SSM Eff'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the risk index without horns for the crossing after being reduced for the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (RIWH), which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI''), which is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. Once again it is assumed that the Nationwide Significant Risk Threshold is 17,030. The Quiet Zone Risk Index must be reduced to either the Nationwide Significant Risk Threshold (17,030) or to the Risk Index with Horns in order to qualify under the rule.

(c) Table 5 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 18,705.83. The Quiet Zone Risk Index without any SSMs is 31,375. Since the Nationwide Significant Risk Threshold is less than the calculated Risk Index with Horns, the public authority's goal will be to reduce the risk to at least value of the Risk Index with Horns. This will qualify the Pre-Rule Quiet Zone under the rule.

TABLE 5

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35,000	20,983.21	0	35,000
X	42,000	25,179.86	0	42,000
Y	33,500	20,083.93	0	33,500
Z	15,000	8,576.33	0	15,000
	RIWH			QZRI
	18,705.83			31,375

(d) The Z Street crossing is scheduled to have flashing lights and gates installed as part of the state's highway-rail grade crossing safety improvement plan (Section 130). While this upgrade is not directly a part of the plan to authorize a quiet zone, the public authority may take credit for the risk reduction achieved by the improvement from a passive STOP sign crossing to a crossing equipped with flashing lights and gates. Unlike New Quiet Zones, upgrades to warning devices in Pre-Rule Quiet Zones do contribute to the risk reduction necessary to qualify under the rule. Table 6 shows the quiet zone corridor after including the warning device upgrade at Z Street. The Quiet Zone Risk Index has been reduced to 29,500.

TABLE 6

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35,000	20,983.21	0	35,000
X	42,000	25,179.86	0	42,000
Y	33,500	20,083.93	0	33,500
Z	7,500	8,576.33	0	7,500
	RIWH			QZRI
	18,705.83			29,500

(e) The public authority elects to install four-quadrant gates without vehicle presence detection at X Street. As shown in Table 7, this reduces the Quiet Zone Risk Index to 20,890. This risk reduction is not sufficient to quality as quiet zone under the rule.

TABLE 7

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35,000	20,983.21	0	35,000
X	42,000	25,179.86	0.82	7,560
Y	33,500	20,083.93	0	33,500
Z	7,500	8,576.33	0	7,500
	RIWH			QZRI
	18,705.83			20,890

(f) The public authority next decides to use traffic channelization devices at W Street. Table 8 shows that the Quiet Zone Risk Index is now reduced to 14,327.5. This risk reduction fully compensates for the loss of the train horn as it is less than the Risk Index with Horns. The quiet zone is qualified under the rule.

TABLE 8

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0.75	8750
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH			QZRI
	18705.83			14327.5

Appendix D to Part 222—Determining Risk Levels

Introduction

The Nationwide Significant Risk Threshold, the Crossing Corridor Risk Index, and the Quiet Zone Risk Index are all measures of collision risk at public highway-rail grade crossings that are weighted by the severity of the associated casualties. Each crossing can be assigned a risk index.

(a) The *Nationwide Significant Risk Threshold* represents the average severity weighted collision risk for all public highway-rail grade crossings equipped with lights and gates nationwide where train horns are routinely sounded. FRA developed this index to serve as a threshold of permissible risk for quiet zones established under this rule.

(b) The *Crossing Corridor Risk Index* represents the average severity weighted collision risk for all public highway-rail grade crossings along a defined rail corridor.

(c) The *Quiet Zone Risk Index* represents the average severity weighted collision risk for all public highway-rail grade crossings that are part of a quiet zone.

The Prediction Formulas

(a) The Prediction Formulas were developed by DOT as a guide for allocating scarce traffic safety budgets at the State level. They allow users to rank candidate crossings for safety improvements by collision probability. There are three formulas, one for each warning device category:

1. automatic gates with flashing lights;
2. flashing lights with no gates; and
3. passive warning devices.

(b) The prediction formulas can be used to derive the following for each crossing:

1. the predicted collisions (PC)
2. the probability of a fatal collision given that a collision occurs (P(FC|C))
3. the probability of a casualty collision given that a collision occurs (P(CC|C))

(c) The following factors are the determinants of the number of predicted collisions per year:

1. average annual daily traffic
2. total number of trains per day
3. number of highway lanes
4. number of main tracks
5. maximum timetable train speed
6. whether the highway is paved or not
7. number of through trains per day during daylight hours

(d) The resulting basic prediction is improved in two ways. It is enriched by the particular crossing's collision history for the previous five years and it is calibrated by resetting normalizing constants. The normalizing constants are reset so that the sum of the predicted accidents in each warning device group (passive, flashing lights, gates) for the top twenty percent most hazardous crossings exactly equals the

number of accidents which occurred in a recent period for the top twenty percent of that group. This adjustment factor allows the formulas to stay current with collision trends. The calibration also corrects for errors such as data entry errors. The final output is the predicted number of collisions (PC).

(e) The severity formulas answer the question, ''What is the chance that a fatality (or casualty) will happen, given that a collision has occurred?'' The fatality formula calculates the probability of a fatal collision given that a collision occurs (*i.e.*, the probability of a collision in which a fatality occurs) P(FC|C). Similarly, the casualty formula calculates the probability of a casualty collision given that a collision occurs P(CC|C). As casualties consist of both fatalities and injuries, the probability of a non-fatal injury collision is found by subtracting the probability of a fatal collision from the probability of a casualty collision. To convert the probability of a fatal or casualty collision to the number of expected fatal or casualty collisions, that probability is multiplied by the number of predicted collisions (PC).

(f) For the prediction and severity index formulas, please see the following DOT publications: *Summary of the DOT Rail-Highway Crossings Resource Allocation Procedure—Revised*, June 1987, and the *Rail-Highway Crossing Resource Allocation Procedure: User's Guide, Third Edition*, August 1987. Both documents are in the docket for this rulemaking and also available through the National Technical Information Service located in Springfield, Virginia 22161.

Risk Index

(a) The risk index is basically the predicted cost to society of the casualties that are expected to result from the predicted collisions at a crossing. It incorporates three outputs of the DOT prediction formulas. The two components of a risk index are:

1. Predicted Cost of Fatalities = PC × P(FC|C) × (Average Number of Fatalities Observed In Fatal Collisions) × $3 million
2. Predicted Cost of Injuries = PC × (P(CC|C)—P(FC|C)) × (Average Number of Injuries in Collisions Involving Injuries) × $1,167,000

PC, P(CC|C), and P(FC|C) are direct outputs of the DOT prediction formulas.

(b) The average number of fatalities observed in fatal collisions and the average number of injuries in collisions involving injuries were calculated by FRA as follows.

(c) The highway-rail incident files from 1999 through 2003 were matched against a data file containing the list of whistle ban crossings in existence from January 1, 1999 through December 31, 2003 to identify two types of collisions involving trains and motor vehicles: (1) Those that occurred at crossings where a whistle ban was in place during the period, and (2) those that occurred at crossings equipped with automatic gates where a whistle ban was not in place. Certain records were excluded. These were incidents where the driver was not in the motor vehicle, or the motor vehicle struck the train beyond the 4th locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.[2]

(d) Collisions in the group containing the gated crossings nationwide where horns are routinely sounded were then identified as either fatal, injury only, or no casualty. Collisions were identified as fatal if one or more deaths occurred, regardless of whether or not injuries were also sustained. Collisions were identified as injury only when injuries, but no fatalities, resulted.

(e) The collisions (incidents) selected were summarized by year from 1999 through 2003. The total number of collisions for the period was 2,161. The fatality rate for each year was calculated by dividing the number of fatalities (''Deaths'') by the number of fatal incidents (''Number''). The injury rates were calculated by dividing the number of injuries in injury only incidents (''Injured'') by the number of injury only incidents (''Number''). There were 274 fatal incidents resulting in 324 fatalities and yielding a fatality rate 1.1825 for the period. There were 551 injury-only incidents resulting in 733 injuries and yielding an injury rate 1.3303 for the period.

(f) Per guidance from DOT, $3 million is the value placed on preventing a fatality. The Abbreviated Injury Scale (AIS) developed by the Association for the Advancement of Automotive Medicine categorizes injuries into six levels of severity. Each AIS level is assigned a value of injury avoidance as a fraction of the value of avoiding a fatality . FRA rates collisions that occur at train speeds in excess of 25 mph as an AIS level 5 ($2,287,500) and injuries that result from collisions involving trains traveling under 25 mph as an AIS level 2 ($46,500). About half of grade crossing collisions occur at speeds greater than 25 mph. Therefore, FRA estimates that the value of preventing the average injury resulting from a grade crossing collision is $1,167,000 (the average of an AIS–5 injury and an AIS–2 injury).

(g) Notice that the quantity [PC*P(FC|C)] represents the expected number of fatal collisions. Similarly, {PC*[P(CC|C)–P(FC|C)]} represents the expected number of injury collisions. These are then multiplied by their respective average number of fatalities and injuries (from the table above) to develop the number of expected casualties. The final parts of the expressions attach the dollar values for these casualties.

(h) The Risk Index for a Crossing is the integer sum of the Predicted Cost of Fatalities and the Predicted Cost of Injuries.

Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated crossings nationwide where train horns are routinely sounded. FRA identified 35,803 gated non-whistle ban crossings for input to the Nationwide Significant Risk Threshold.

The Nationwide Significant Risk Threshold rounds to 17,030. This value is recalculated annually.

Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the crossings in a defined rail corridor. Communities seeking to establish ''Quiet Zones'' should initially calculate this average for potential corridors.

Quiet Zone Risk Index

The Quiet Zone Risk Index is the average of the risk indexes of all the public crossings in a Quiet Zone. It takes into consideration the absence of the horn sound and any safety measures that may have been installed.

Appendix E to Part 222—Requirements for Wayside Horns

This appendix sets forth the following minimum requirements for wayside horn use at highway-rail grade crossings:

1. Highway-rail crossing must be equipped with constant warning time device, if reasonably practical, and power-out indicator;
2. Horn system must be equipped with an indicator or other system to notify the locomotive engineer as to whether the wayside horn is operating as intended in sufficient time to enable the locomotive engineer to sound the locomotive horn for at least 15 seconds prior to arrival at the crossing in the event the wayside horn is not operating as intended;
3. The railroad must adopt an operating rule, bulletin or special instruction requiring that the train horn be sounded if the wayside horn indicator is not visible approaching the crossing or if the wayside horn indicator, or an equivalent system, indicates that the system is not operating as intended;
4. Horn system must provide a minimum sound level of 92 dB(A) and a maximum of 110 dB(A) when measured 100 feet from the centerline of the nearest track;
5. Horn system must sound at a minimum of 15 seconds prior to the train's arrival at the crossing and while the lead locomotive is traveling across the crossing. It is permissible for the horn system to begin to sound simultaneously with activation of the flashing lights or descent of the crossing arm; arm
6. Horn shall be directed toward approaching traffic.

Appendix F to Part 222—Diagnostic Team Considerations

For purposes of this part, a diagnostic team is a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning the safety needs at that crossing. Crossings proposed for inclusion in a quiet zone should be reviewed in the field by a diagnostic team composed of railroad personnel, public safety or law enforcement, engineering personnel from the State agency responsible for grade crossing safety, and other concerned parties.

[2] The data used to make these exclusions is contained in blocks 18—Position of Car Unit in Train; 19—Circumstance: Rail Equipment Struck/Struck By Highway User; 28—Number of Locomotive Units; and 29—Number of Cars of the current FRA Form 6180–57 Highway-Rail Grade Crossing Accident/Incident Report.

This diagnostic team, using crossing safety management principles, should evaluate conditions at a grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what safety measures authorized by this part might be utilized to compensate for the silencing of the train horns within the proposed quiet zone.

All Crossings Within a Proposed Quiet Zone

The diagnostic team should obtain and review the following information about each crossing within the proposed quiet zone:

1. Current highway traffic volumes and percent of trucks;
2. Posted speed limits on all highway approaches;
3. Maximum allowable train speeds, both passenger and freight;
4. Accident history for each crossing under consideration;
5. School bus or transit bus use at the crossing; and
6. Presence of U.S. DOT grade crossing inventory numbers clearly posted at each of the crossings in question.

The diagnostic team should obtain all inventory information for each crossing and should check, while in the field, to see that inventory information is up-to-date and accurate. Outdated inventory information should be updated as part of the quiet zone development process.

When in the field, the diagnostic team should take note of the physical characteristics of each crossing, including the following items:

1. Can any of the crossings within the proposed quiet zone be closed or consolidated with another adjacent crossing? Crossing elimination should always be the preferred alternative and it should be explored for crossings within the proposed quiet zone.
2. What is the number of lanes on each highway approach? Note the pavement condition on each approach, as well as the condition of the crossing itself.
3. Is the grade crossing surface smooth, well graded and free draining?
4. Does the alignment of the railroad tracks at the crossing create any problems for road users on the crossing? Are the tracks in superelevation (are they banked on a curve?) and does this create a conflict with the vertical alignment of the crossing roadway?
5. Note the distance to the nearest intersection or traffic signal on each approach (if within 500 feet or so of the crossing or if the signal or intersection is determined to have a potential impact on highway traffic at the crossing because of queuing or other special problems).
6. If a roadway that runs parallel to the railroad tracks is within 100 feet of the railroad tracks when it crosses an intersecting road that also crosses the tracks, the appropriate advance warning signs should be posted as shown in the MUTCD.
7. Is the posted highway speed (on each approach to the crossing) appropriate for the alignment of the roadway and the configuration of the crossing?
8. Does the vertical alignment of the crossing create the potential for a ''hump crossing'' where long, low-clearance vehicles might get stuck on the crossing?
9. What are the grade crossing warning devices in place at each crossing? Flashing lights and gates are required for each public crossing in a New Quiet Zone. Are all required warning devices, signals, pavement markings and advance signing in place, visible and in good condition for both day and night time visibility?
10. What kind of train detection is in place at each crossing? Are these systems old or outmoded; are they in need of replacement, upgrading, or refurbishment?
11. Are there sidings or other tracks adjacent to the crossing that are often used to store railroad cars, locomotives, or other equipment that could obscure the vision of road users as they approach the crossings in the quiet zone? Clear visibility may help to reduce automatic warning device violations.
12. Are motorists currently violating the warning devices at any of the crossings at an excessive rate?
13. Do collision statistics for the corridor indicate any potential problems at any of the crossings?
14. If school buses or transit buses use crossings within the proposed quiet zone corridor, can they be rerouted to use a single crossing within or outside of the quiet zone?

Private Crossings Within a Proposed Quiet Zone

In addition to the items discussed above, a diagnostic team should note the following issues when examining any private crossings within a proposed quiet zone:

1. How often is the private crossing used?
2. What kind of signing or pavement markings are in place at the private crossing?
3. What types of vehicles use the private crossing?
   School buses
   Large trucks
   Hazmat carriers
   Farm equipment
4. What is the volume, speed and type of train traffic over the crossing?
5. Do passenger trains use the crossing?
6. Do approaching trains sound the horn at the private crossing?
   State or local law requires it?
   Railroad safety rule requires it?
7. Are there any nearby crossings where train horns sound that might also provide some warning if train horns were not sounded at the private crossing?
8. What are the approach (corner) sight distances?
9. What is the clearing sight distance for all approaches?
10. What are the private roadway approach grades?
11. What are the private roadway pavement surfaces?

Pedestrian Crossings Within a Proposed Quiet Zone

In addition to the items discussed in the section titled, ''All crossings within a proposed quiet zone'', a diagnostic team should note the following issues when examining any pedestrian crossings within a proposed quiet zone:

1. How often is the pedestrian crossing used?
2. What kind of signing or pavement markings are in place at the pedestrian crossing?
3. What is the volume, speed, and type of train traffic over the crossing?
4. Do approaching trains sound the horn at the pedestrian crossing?
   State or local law requires it?
   Railroad safety rule requires it?
5. Are there any crossings where train horns sound that might also provide some warning if train horns were not sounded at the pedestrian crossing?
6. What are the approach sight distances?
7. What is the clearing sight distance for all approaches?

Appendix G to Part 222—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
§ 222.21 Use of locomotive horn		
(a) Failure to sound horn at grade crossing	$5,000	$7,500
Failure to sound horn in proper pattern	1,000	3,000
(b) Failure to sound horn at least 15 seconds and less than ¼-mile before crossing	5,000	7,500
Sounding the locomotive horn more than 25 seconds before crossing	1,000	2,000
Sounding the locomotive horn more than ¼-mile in advance of crossing	1,000	2,000
§ 222.33 Failure to sound horn when conditions of § 222.33 are not met	5,000	7,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $27,000 for any violation where circumstances warrant. See 49 CFR Part 209, appendix A.

Section		Violation	Willful violation
§ 222.45	Routine sounding of the locomotive horn at quiet zone crossing	5,000	7,500
§ 222.49	(b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
§ 222.59	(d) Routine sounding of the locomotive horn at a grade crossing equipped with wayside horn	5,000	7,500

PART 229—[AMENDED]

■ 2. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–20302, 21304; 49 CFR 149(c), (m).

■ 3. Section 229.5 is amended by adding the following definitions in alphabetical order:

§ 229.5 Definitions.

* * * * *

Acceptable quality level (AQL). The AQL is expressed in terms of percent defective or defects per 100 units. Lots having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for that AQL.

* * * * *

Defective means, for purposes of section 229.129 of this part, a locomotive equipped with an audible warning device that produces a maximum sound level in excess of 110 dB(A) and/or a minimum sound level below 96 dB(A), as measured 100 feet forward of the locomotive in the direction of travel.

* * * * *

Lot means a collection of locomotives, equipped with the same horn model, configuration, and location, and the same air pressure and delivery system, which has been manufactured or processed under essentially the same conditions.

* * * * *

■ 4. Section 229.129 is revised to read as follows:

§ 229.129 Locomotive horn.

(a) Each lead locomotive shall be equipped with a locomotive horn that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The locomotive horn shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive.

(b)(1) Each locomotive built on or after September 18, 2006 shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section. Locomotives built on or after September 18, 2006 may, however, be tested in accordance with an acceptance sampling scheme such that there is a probability of .05 or less of rejecting a lot with a proportion of defectives equal to an AQL of 1% or less, as set forth in 7 CFR part 43.

(2) Each locomotive built before September 18, 2006 shall be tested in accordance with this section before June 24, 2010 to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(3) Each remanufactured locomotive, as determined pursuant to § 229.5 of this part, shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a).

(4)(i) Except as provided in paragraph (b)(4)(ii) of this section, each locomotive equipped with a replacement locomotive horn shall be tested, in accordance with paragraph (c) of this section, before the next two annual tests required by § 229.27 of this part are completed.

(ii) Locomotives that have already been tested individually or through acceptance sampling, in accordance with paragraphs (b)(1), (b)(2), or (b)(3) of this section, shall not be required to undergo sound level testing when equipped with a replacement locomotive horn, provided the replacement locomotive horn is of the same model as the locomotive horn that was replaced and the mounting location and type of mounting are the same.

(c) Testing of the locomotive horn sound level shall be in accordance with the following requirements:

(1) A properly calibrated sound level meter shall be used that, at a minimum, complies with the requirements of International Electrotechnical Commission (IEC) Standard 61672–1 (2002–05) for a Class 2 instrument.

(2) An acoustic calibrator shall be used that, at a minimum, complies with the requirements of IEC standard 60942 (1997–11) for a Class 2 instrument.

(3) The manufacturer's instructions pertaining to mounting and orienting the microphone; positioning of the observer; and periodic factory recalibration shall be followed.

(4) A microphone windscreen shall be used and tripods or similar microphone mountings shall be used that minimize interference with the sound being measured.

(5) The test site shall be free of large reflective structures, such as barriers, hills, billboards, tractor trailers or other large vehicles, locomotives or rail cars on adjacent tracks, bridges or buildings, within 200 feet to the front and sides of the locomotive. The locomotive shall be positioned on straight, level track.

(6) Measurements shall be taken only when ambient air temperature is between 32 degrees and 104 degrees Fahrenheit inclusively; relative humidity is between 20 percent and 95 percent inclusively; wind velocity is not more than 12 miles per hour and there is no precipitation.

(7) With the exception of cab-mounted or low-mounted horns, the microphone shall be located 100 feet forward of the front knuckle of the locomotive, 15 feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. For cab-mounted and low-mounted horns, the microphone shall be located 100 feet forward of the front knuckle of the locomotive, four feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. The observer shall not stand between the microphone and the horn.

(8) Background noise shall be minimal: the sound level at the test site immediately before and after each horn sounding event shall be at least 10 dB(A) below the level measured during the horn sounding.

(9) *Measurement procedures.* The sound level meter shall be set for A-weighting with slow exponential response and shall be calibrated with the acoustic calibrator immediately before and after compliance tests. Any change in the before and after calibration levels shall be less than 0.5 dB. After the output from the locomotive horn system has reached a stable level, the A-weighted equivalent sound level (slow response) for a 10-second duration (LAeq, 10s) shall be obtained either directly using an integrating-averaging sound level meter,

or recorded once per second and calculated indirectly. The arithmetic-average of a series of at least six such 10-second duration readings shall be used to determine compliance. The standard deviation of the readings shall be less than 1.5 dB.

(10) Written reports of locomotive horn testing required by this part shall be made and shall reflect horn type; the date, place, and manner of testing; and sound level measurements. These reports, which shall be signed by the person who performs the test, shall be retained by the railroad, at a location of its choice, until a subsequent locomotive horn test is completed and shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

(d) This section does not apply to locomotives of rapid transit operations which are otherwise subject to this part.

■ 5. The entry for § 229.129 ''Audible warning device'' in appendix B to Part 229 is revised to read as follows:

Appendix B to Part 229—Schedule of Civil Penalties

Section	Violation	Willful violation
* * * * * * *		
229.129 Locomotive horn:		
(a) Prescribed sound levels	2,500	5,000
Arrangement of horn	2,500	5,000
(b) Failure to perform sound level test	2,500	5,000
(c) Sound level test improperly performed	2,500	5,000
Record of sound level test improperly executed, or not retained	1,000	4,000
* * * * * * *		

Issued in Washington, DC on August 7, 2006.

Joseph H. Boardman,

Administrator.

[FR Doc. 06–6912 Filed 8–16–06; 8:45 am]

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August 17, 2006

Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0009, FRL–8210–3]

RIN 2060–AK22

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revised standards to limit emissions of methylene chloride (MC), perchloroethylene (PCE), and trichloroethylene (TCE) from existing and new halogenated solvent cleaning machines. In 1994, EPA promulgated technology-based emission standards to control emissions of methylene chloride (MC), perchloroethylene (PCE), trichloroethylene (TCE), 1,1,1,-trichloroethane (TCA), carbon tetrachloride (CT), and chloroform from halogenated solvent cleaning machines. Pursuant to the Clean Air Act (CAA) section 112(f), EPA has evaluated the remaining risk to public health and the environment following implementation of the technology-based rule and is proposing more stringent standards in order to protect public health with an ample margin of safety. The proposed standards are expected to provide further reductions of MC, PCE, and TCE beyond the 1994 national emission standards for hazardous air pollutants (NESHAP), through application of a facility-wide total MC, PCE, and TCE emission standard. In addition, EPA has reviewed the standards as required by section 112(d)(6) of the CAA and has determined that, taking into account developments in practices, processes, and control technologies, no further action is necessary at this time to revise the national emission standards. The term ''facility-wide'' applies to facilities with emissions associated with halogenated solvent cleaning activities only.

DATES: *Comments.* Comments must be received on or before October 2, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 28, 2006, a public hearing will be held approximately 15 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0009, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a duplicate copy, if possible. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Hand Delivery: Air and Radiation Docket, EPA, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0009. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B–102, 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 EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. H. Lynn Dail, Natural Resources and Commerce Group (E143–03), Sector Policies and Programs Division, EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2363; fax number (919) 541–3470, e-mail address: *dail.lynn@epa.gov*. For questions on the residual risk analysis, contact Mr. Dennis Pagano, Sector Based Assessment Group (C539–02), Health and Environmental Impacts Division, EPA, Research Triangle Park, NC 27711; telephone (919) 541–0502; fax number (919) 541–0840, e-mail address: *pagano.dennis@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The categories and entities potentially regulated by the proposed rule include:

Category	NAICS [1] code	Examples of potentially regulated entities
Industry	Any of numerous industries using halogenated solvent cleaning, primary affected industries include those in NAICS Codes beginning with: 331 (primary metal man.), 332 (fabricated metal man.), 333 (machinery man.), 334 (computer and electronic product man.), 335 (electrical equipment, appliance, and component man.); 336 (transportation equipment man.); 337 (furniture and related products man.); and 339 (misc. man.).	Operations at sources that are engaged in solvent cleaning using MC, PCE, or TCE.
Federal, State, local, and tribal government.		Operations at sources that are engaged in solvent cleaning using MC, PCE, or TCE.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed rule. This proposal directs an owner or operator of halogenated solvent cleaning facilities to determine if whether the applicability criteria in 40 CFR 63.460 of subpart T (1994 national emission standards for Halogenated Solvent Cleaning) remains or whether these proposed standards require the facility to operate under the emission caps set forth. If you have any questions regarding the applicability of the proposed standards to a particular entity, consult 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 public hearing is to be held should contact Ms. Dorothy Apple, Natural Resources and Commerce Group (E143–03), Sector Policies and Programs Division, EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–4487, e-mail address: *apple.dorothy@epa.gov* , at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing also must call Ms. Apple 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 standards.

Worldwide 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 (TTN). 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.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the statutory authority for regulating hazardous air pollutants (HAP)?
B. What is halogenated solvent cleaning?
C. What are the health effects of halogenated solvents?
D. What does the 1994 halogenated solvent cleaning NESHAP require?
II. Summary of Proposed Requirements for New and Existing Major and Area Sources
III. Rationale for the Proposed Rule
A. What is our approach for developing residual risk standards?
B. How did we estimate residual risk?
1. How did we estimate the emission and stack parameters for these sources?
2. How did we estimate the atmospheric dispersion of the emitted pollutants?
3. How were cancer and non-cancer risks estimated?
4. What factors are considered in the risk assessment?
C. What are the results of the baseline risk assessment?
D. What is our proposed decision on acceptable risk?
E. What is our proposed decision on ample margin of safety?
1. What risk reduction alternatives did EPA evaluate?
2. What are the costs of the proposed alternatives?
3. What regulatory options is EPA proposing?
4. Rationale for Option 1
5. Rationale for Option 2
6. Comparison of Option 1 and 2
F. What is EPA proposing pursuant to CAA Section 112(d)(6)?
G. What is the rationale for the proposed compliance schedule?
IV. Solicitation of Public Comments
A. Introduction and General Solicitation
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Background

A. What is the statutory authority for regulating hazardous air pollutants (HAP)?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, CAA section 112(d) calls for us to promulgate national technology-based emission standards for categories of 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 (known as ''major sources''), as well as for certain ''area sources'' emitting less than those amounts. For major sources, 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 maximum achievable control technology (MACT) standards.

For area sources, CAA section 112(d)(5) provides that the standards

may reflect generally available control technology or management practices in lieu of MACT, and are commonly referred to as generally available control technology (GACT) standards.

CAA section 112(d)(6) then requires EPA 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 8 years.

The second stage in standard-setting is described in section 112(f) of the CAA. EPA prepared 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.

CAA section 112(f)(2) requires us to determine for each CAA section 112(d) source category whether the MACT standards 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-a-million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety. The EPA must also adopt more stringent standards to prevent an adverse environmental effect (defined in CAA 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 is halogenated solvent cleaning?

Halogenated solvent cleaning machines use halogenated solvents (methylene chloride, perchloroethylene, trichloroethylene, 1,1,1,-trichloroethane, carbon tetrachloride, and chloroform), halogenated solvent blends, or their vapors to remove soils such as grease, oils, waxes, carbon deposits, fluxes, and tars from metal, plastic, fiberglass, printed circuit boards, and other surfaces. Halogenated solvent cleaning is typically performed prior to processes such as painting, plating, inspection, repair, assembly, heat treatment, and machining. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines. Buckets, pails, and beakers with capacities of 7.6 liters (2 gallons) or less are not considered solvent cleaning machines.

Halogenated solvent cleaning does not constitute a distinct industrial category, but is an integral part of many major industries. The five 3-digit NAICS Code that use the largest quantities of halogenated solvents for cleaning are NAICS 337 (furniture and related products manufacturing), NAICS 332 (fabricated metal manufacturing), NAICS 335 (electrical equipment, appliance, and component manufacturing), NAICS 336 (transportation equipment manufacturing), and NAICS 339 (miscellaneous manufacturing). Additional industries that use halogenated solvents for cleaning include NAICS 331 (primary metals), NAICS 333 (machinery), and NAICS 334 (electronic equipment manufacturing). Non-manufacturing industries such as railroad (NAICS 482), bus (NAICS 485), aircraft (NAICS 481), and truck (NAICS 484) maintenance facilities; automotive and electric tool repair shops (NAICS 811); and automobile dealers (NAICS 411) also use halogenated solvent cleaning machines. We estimated that there were approximately 16,400 batch vapor, 8,100 in-line, and perhaps as many as 100,000 batch cold cleaning machines in the U.S. prior to promulgation of the MACT standards. More recent information shows that the current number of cleaning machines is much lower than these pre-MACT estimates. We currently estimate the number of sources in this source category to be about 3,800 cleaning machines located at 1,900 facilities in the U.S. This estimate is based on information we collected in 1998, a year after compliance with the MACT occurred, and should reflect the decreases in HAP emissions and demand that were expected due to implementation of MACT control technologies and work practice standards. Recent evidence on solvent usage suggests that the number of sources in the source category may have declined further in the post-MACT implementation years. An analysis of market data for halogenated solvents showed that the demand for degreasing solvents declined substantially in the 5 years following the implementation of MACT. From 1998 to 2003, the demand for PCE, TCE, MC, and TCA for degreasing decreased by 39 percent, 35 percent, 23 percent, and 15 percent, respectively. The halogenated solvents carbon tetrachloride and chloroform are no longer used in this source category. The Montreal Protocol, a treaty signed on September 16, 1987, phased-out the production and consumption of these chlorofluorocarbons by January 1, 1996. The Protocol also phased out TCA. TCA has not been manufactured for domestic use in the United States since January 1, 2002. Facilities with essential products or activities are allowed to continue their use of TCA, but for facilities with non-essential activities or products, they were allowed to use remaining TCA stockpiles until depleted.

There are two basic types of solvent cleaning machines: Batch cleaners and in-line cleaners. Both cleaner types can be designed to use either solvent at room temperature (cold cleaners) or solvent vapor (vapor cleaners). The vast majority of halogenated solvent use is in vapor cleaning, both batch and in-line. The most common type of batch cleaner that uses halogenated solvent is the open-top vapor cleaner (OTVC).

Batch cleaning machines, which are the most common type, are defined as a solvent cleaning machine in which individual parts or sets of parts move through the entire cleaning cycle before new parts are introduced. Batch cleaning machines include cold and vapor machines. In batch cold cleaning machines, the material being cleaned (*i.e.*, the workload) is immersed, flushed, or sprayed with liquid solvent at room temperature. Most batch cold cleaners are small maintenance cleaners (*e.g.*, carburetor cleaners) or parts washers that often use non-HAP solvent mixtures for cleaning. Batch cold cleaning equipment sometimes includes agitation to improve cleaning efficiency.

In batch vapor cleaning machines, parts are lowered into an area of dense vapor solvent for cleaning. The most common type of batch vapor cleaner is the open-top vapor cleaner. Heating elements at the bottom of the cleaner heat the liquid solvent to above its boiling point. Solvent vapor rises in the machine to the height of chilled condensing coils on the inside walls of the cleaner. The condensing coils cool the vapor causing it to condense and return to the bottom of the cleaner. Cleaning occurs in the vapor zone above the liquid solvent and below the condensing coils, as the hot vapor solvent condenses on the cooler

workload surface. The workload or a parts basket is lowered into the heated vapor zone with a mechanical hoist.

Batch vapor cleaning machines vary greatly in size and design to suit applications in many industries. Batch vapor cleaner sizes are defined by the area of the solvent/air interface.

Emissions from batch cold cleaning machines result from evaporation of solvent from the solvent/air interface ''carry out'' of excess solvent on cleaned parts, and other evaporative losses such as those that occur during filling and draining. Evaporative emissions from the solvent/air interface are continual whether or not the machine is in use. These evaporative losses can be reduced by limiting air movement over the solvent/air interface (*e.g.*, with a machine cover or by reducing external drafts) or by limiting the area of solvent air interface (*e.g.*, with a floating water layer). Emissions related to solvent carry out occur only when the cleaning machine is in use. Carry out emissions may be substantial, especially if excess solvent is not allowed to drain back into the machine. Carry out includes solvent film remaining on flat workload surfaces and liquid pooled in cavities. Factors affecting the amount of carry out loss include the speed of parts movement, workload shapes and materials, and work practices (*e.g.*, turning over parts to drain cavities).

The closed-loop cleaning system is a type of batch cleaner with a closed system capable of reusing solvent. Parts are placed inside a vacuum chamber. Vapor or liquid solvent is pumped in the chamber to clean the parts. Once cleaned, the parts are dried under vacuum and removed; the solvent is removed and recycled. Because these systems are constructed to maintain a vacuum, they have the potential to reduce emissions up to 97 percent.

Cold and vapor in-line (*i.e.*, conveyorized) cleaning machines, which include continuous web cleaners, employ automated parts loading and are used in applications where there is a constant stream of parts to be cleaned. In-line cleaners usually are used in large-scale industrial operations (*e.g.*, auto manufacturing) and are custom-designed for specific workload and production characteristics (*e.g.*, workload size, shape, and production rate). In-line cleaners clean parts using the same general techniques used in batch cleaners: cold in-line cleaners spray or immerse parts in solvent, and vapor in-line cleaners clean parts in a zone of dense vapor solvent.

Emissions from cold and vapor in-line cleaning machines result from the same mechanisms (*e.g.*, evaporation, diffusion, carryout) that cause emissions from cold and vapor batch cleaning machines. However, the emission points for in-line cleaners are different from those for batch cleaners because of differences in machine configurations. In-line cleaning machines are semi-enclosed above the solvent/air interface to control solvent losses. In most cases, the only openings are the parts entry and exit ports. These openings are the only emissions points for downtime and idling modes. Carryout emissions add to emissions during the working mode. Idling and working mode emissions from the in-line cleaner are significantly less than emissions from an equally-sized batch vapor cleaner. However, in-line cleaners tend to be much larger than batch vapor cleaners. Some in-line cleaners have exhaust systems that pump air from inside the cleaning machine to an outside vent. Exhaust systems for in-line cleaners reduce indoor emissions from the cleaning machine but increase solvent consumption.

Continuous cleaners are a subset of in-line cleaners and are used to clean products such as films, sheet metal, and wire in rolls or coils. The workload is uncoiled and conveyorized throughout the cleaning machine at speeds in excess of 11 feet per minute and recoiled or cut as it exits the machine. Emission points from continuous cleaners are similar to emission points from other inline cleaners. Continuous cleaners are semi-enclosed, with emission points where the workload enters and exits the machine. Squeegee rollers reduce carry out emissions by removing excess solvent from the exiting workload. Some continuous machines have exhaust systems similar to those used with some other in-line cleaners.

C. What are the health effects of halogenated solvents?

Methylene chloride, perchloroethylene, 1,1,1,-trichloroethylene (TCA), and trichloroethylene are the primary halogenated solvents used for solvent cleaning. Carbon tetrachloride and chloroform are no longer used as degreasing solvents. Therefore, their health effects are not discussed in this section. The four solvents still in use are described below. All four produce acute and/or chronic non-cancer health effects at sufficient concentrations; three of the four have been classified as probable or possible human carcinogens by either EPA or other governmental or international agencies.

Methylene chloride is predominantly used as a solvent. The acute effects of methylene chloride inhalation in humans consist mainly of central nervous system effects including decreased visual, auditory, and motor functions that may occur at or above 1-hour exposures of 690 mg/m^3, but these effects are reversible once exposure ceases. The effects of chronic exposure to methylene chloride suggest that the central nervous system is a potential target in humans and animals. ATSDR estimates that no adverse noncancer effects are likely in human populations chronically exposed at or below 1 mg/m^3. Human studies are inadequate regarding methylene chloride and cancer. However, animal studies have shown significant increases in liver and lung cancer and benign mammary gland tumors following the inhalation of methylene chloride. On this basis, EPA classified methylene chloride as a Group B2, probable human carcinogen, with a cancer unit risk estimate (URE) of 4.7×10^{-7} (μg/m^3)$^{-1}$, when assessed under the previous 1986 Cancer Guidelines. EPA is currently reassessing its potential toxicity and carcinogenicity. All activities related to this chemical reassessment are expected to be complete in late 2007.

Perchloroethylene (PCE or tetrachloroethylene) is widely used for dry-cleaning fabrics and metal degreasing operations. The main effects of PCE in humans are neurological, liver, and kidney damage following acute (short-term) and chronic (long-term) inhalation exposure. The results of epidemiological studies evaluating the relative risk of cancer associated with PCE exposure have been mixed; some studies reported an increased incidence of a variety of tumors, while other studies did not report any carcinogenic effects. Animal studies have reported an increased incidence of liver cancer in mice, via inhalation and gavage (experimentally placing the chemical in the stomach), and kidney and mononuclear cell leukemia in rats.

Although PCE has not yet been reassessed under the Agency's recently revised Guidelines for Cancer Risk assessment, it was considered in one review by the EPA's Science Advisory Board to be intermediate between a ''probable'' and ''possible'' human carcinogen (Group B/C) when assessed under the previous 1986 Guidelines. Since that time, the U.S. Department of Health and Human Services has concluded that PCE is ''reasonably anticipated to be a human carcinogen,'' and the International Agency for Research on Cancer has concluded that PCE is ''probably carcinogenic to humans.''

Effects other than cancer associated with long-term inhalation of PCE in worker or animal studies include neurotoxicity, liver and kidney damage, and, at higher levels, developmental effects. To characterize noncancer hazard in lieu of the completed Integrated Risk Information System (IRIS) assessment, which is being revised, we used the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimum Risk Level (MRL). This value is based on a study of neurological effects in workers in dry cleaning shops, and is derived in a manner similar to EPA's method for derivation of reference concentrations, including scientific and public review. Based on these effects, EPA estimates that no adverse noncancer effects are likely in human populations chronically exposed at or below 0.27 mg/m^3.

The Agency's IRIS chemical assessment for PCE is currently being revised. The current schedule indicates that a final IRIS determination on PCE is not expected until 2008 at the earliest. Because EPA has not yet issued a final IRIS document for PCE, to estimate cancer risk, we used the California EPA (CalEPA) unit risk estimate (URE) of 5.9×10^{-6} (ug/m^3)$^{-1}$, as well as a URE value developed by the EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) of 7.1×10^{-7} (ug/m^3)$^{-1}$. The final IRIS reassessment may result in a URE that is different from these two values. Among the available Acute Reference Levels (ARL), the one-hour California Reference Exposure Level (a REL value of 240 mg/m^3) was considered the most appropriate to use in the assessment because it may be used to characterize acute risk for exposure with an exposure duration of one hour.

Most of the trichloroethylene (TCE) used in the United States is released into the atmosphere from industrial degreasing operations. Acute and chronic inhalation exposure to trichloroethylene can affect the human central nervous system, with symptoms such as dizziness, headaches, confusion, euphoria, facial numbness, and weakness. Liver, kidney, immunological, endocrine, and developmental effects have also been reported in humans. Acute effects may occur at or above 1-hour exposures of 700 mg/m^3. CalEPA estimates that no adverse noncancer effects are likely in human populations chronically exposed at or below 0.6 mg/m^3. Animal studies have reported statistically significant increases in kidney, lung, liver, and testicular tumors. EPA classified trichloroethylene in Group B2/C, an intermediate between a probable and possible human carcinogen, when assessed under the previous 1986 Cancer Guidelines, but this classification has been withdrawn. CalEPA has derived a cancer URE of 2.0×10^{-6} (ug/m^3)$^{-1}$ for TCE, which we used for our cancer risk assessment. EPA is currently reassessing the cancer classification of trichloroethylene.

In 1999, TCA was used as a solvent for degreasing up until it was phased out in 2002. CalEPA estimates that no adverse noncancer effects are likely in human populations chronically exposed to TCA at or below 1 mg/m^3. EPA classified TCA in Group D, not classifiable as to human carcinogenicity, when assessed under the previous 1986 Cancer Guidelines. EPA is currently reassessing its potential toxicity (related to chronic and less-than-lifetime exposures). All activities related to chemical reassessment are expected to be complete in 2007. Although production and use of TCA has been phased-out since 1998, a declining quantity of TCA continued to be used until 2002, when all production of TCA ceased, and eventually, facilities used TCA stock-piles until depleted. However, an exemption to the phase-out allows a few specialized facilities with essential activities or products to continue its use of TCA. TCA was profiled in the noncancer chronic risk assessment.

The OPPTS toxicity profile for perchloroethylene (PCE) is published in an EPA publication entitled, Cleaner technologies substitutes assessment: professional fabricare processes. U.S. EPA Office of Pollution Prevention and Toxics, Washington DC. EPA 744–B–98–001; June 1998. Complete toxicity profiles for the four HAPs may be obtained from the following Web sites: EPA's OPPTS Web site for perchloroethylene at *http://www.epa.gov/dfe/pubs/garment/ctsa/fabricare.pdf*; California EPA's Web site at *http://www.oehha.ca.gov/air/hot_spots/index.html*; and the Agency for Toxic Substances and Disease Registry's Web site at *http://www.atsdr.cdc.gov/toxpro2.html*. Status reports for IRIS chemical reassessments are available at *http://cfpub.epa.gov/iristrac/index.cfm.*

D. What does the 1994 halogenated solvent cleaning NESHAP require?

We promulgated national emission standards for halogenated solvent cleaning (59 FR 61805, December 2, 1994) and required existing sources to comply with the national emission standards by December 2, 1996. The halogenated solvent cleaner NESHAP requires batch vapor solvent cleaning machines and in-line solvent cleaning machines to meet emission standards reflecting the application of the maximum achievable control technology for major and area sources; area source batch cold cleaning machines are required to achieve generally available control technology. The rule regulates the emissions of the following halogenated HAP solvents: MC, PCE, TCE, TCA, CT, and chloroform. In 1999, MC, PCE, TCE and TCA were the primary halogenated solvents used for solvent cleaning. Although production and use of TCA has been phased-out since 1998, a declining quantity of TCA continued to be used until 2002, with either facilities depleting existing stockpiles past 2002 or facilities with essential products or activities continuing use of TCA. CT and chloroform are no longer used as degreasing solvents.

The promulgated standard includes multiple alternatives to allow owners or operators maximum compliance flexibility. These alternatives include:

- Control equipment standards—As many as 10 combinations of emission control equipment, such as freeboard refrigeration devices and working-mode covers may be installed.
- Idling-mode emissions standards—Compliance may be demonstrated by maintaining monthly emission rates during the idling mode below specified standards.
- Overall emission standards—Solvent use and disposal records may be used to calculate average monthly emissions, which must remain below specified numerical limits.

If an owner or operator of a batch vapor or in-line cleaning machine elects to comply with the equipment standard, they must install one of the control combinations listed in the regulation, use an automated parts handling system to process all parts, and follow multiple work practices. As an alternative to selecting one of the equipment control combinations listed in the regulation, an owner or operator may demonstrate that the batch vapor or in-line cleaning machine can meet the idling mode emission limit specified in the standards. In addition to maintaining this idling mode emission limit, the owner or operator of a batch vapor or in-line solvent cleaning machine must use an automated parts handling system to process all parts and comply with the work practice standards. A third alternative for complying with these standards is to comply with the overall solvent emissions limit. An owner or operator complying with the overall solvent emissions limit is required to ensure that the emissions from each

solvent cleaning machine are less than or equal to the solvent emission levels specified in the standard. Under this alternative standard, an owner or operator is not required to use an automated parts handling system or to comply with the work practice standards.

The batch cold cleaning machine standard is an equipment standard. However, those owners or operators choosing the equipment options without the water layer must also comply with work practice requirements. There is no idling standard or overall solvent emissions standard for batch cold cleaning machines. Batch cold cleaning machines located at non-major sources are exempt from Title V permit requirements.

The halogenated solvent cleaning NESHAP was estimated to reduce nationwide emissions of hazardous air pollutants (HAP) from halogenated solvent cleaning machines by 77,400 Mg/yr (85,300 tons per year) or 63 percent by 1997 compared to the emissions that would result in the absence of the standards.

II. Summary of the Proposed Requirements for New and Existing Major and Area Sources

Under the proposed standards, the requirements for all new and existing, major and area sources are the same. In addition to the MACT standard, the proposed revisions would require each facility to comply with a facility-wide solvent emission limit. As defined by this proposed rule, ''facility-wide solvent emissions'' are the combined emissions of PCE, TCE, and MC from all of a facility's solvent cleaning machines that are subject to the 1994 MACT standards (40 CFR Part 63, subpart T). Under CAA section 112(f), EPA has the discretion to impose residual risk standards on area sources regulated under generally available control technologies (GACT). The area sources subject to GACT in the halogenated solvent cleaning source category would not be subject to today's proposed standards. These sources are cold batch cleaners.

The proposed rule would require the owner or operator of each facility to ensure that their facility-wide solvent emissions from all halogenated solvent cleaning activities are less than or equal to the solvent emission limits specified in the proposed options and summarized in Table 1 of this preamble. This approach gives the owner or operator of the facility the flexibility to choose any means of reducing the facility-wide emissions of PCE, TCE, and MC to comply with facility-wide emission limit. The proposed options are in addition to the existing NESHAP requirements and, therefore, all requirements of the existing NESHAP remain in place.

Table 1 shows two sets of facility-wide emission limits—option 1 and option 2. We are co-proposing both of these options and are soliciting comment on which of these two options is most appropriate. As can be seen in Table 1 of this preamble, each halogenated solvent has an associated facility-wide emission limit. These limits are for facilities that emit only a single halogenated solvent. If more than one halogenated solvent is used, the owner or operator of the facility must calculate the facility's weighted halogenated solvent cleaning emissions using equation 1 and comply with the limit in the last row of Table 1 of this preamble. Note that, depending on whether the CalEPA URE or the OPPTS URE for PCE is used to derive the PCE limit, that limit may be lower or higher. We request comment on the use of the CalEPA URE, the OPPTS URE, or some other value in deriving the PCE emission limit for the final rule.

TABLE 1.—SUMMARY OF THE PROPOSED FACILITY-WIDE ANNUAL EMISSION LIMITS

Solvents emitted	Proposed facility-wide annual emission limits in kg—option 1	Proposed facility-wide annual emission limits in kg—option 2
PCE only	[a] 3,200 [b] (26,700)	[a] 2,000 [b] (16,700)
TCE only	10,000	6,250
MC only	40,000	25,000
Multiple solvents—Calculate the MC-weighted emissions using equation 1	40,000	25,000

[a] PCE emission limit calculated using CalEPA URE.
[b] PCE emission limit calculated using OPPTS URE.

Equation 1:

(kgs of PCE emissions × A) + (kgs of TCE emissions × B) + (kgs of MC emissions) = Weighted Emissions in kgs

We developed a method for facilities using multiple HAP solvents to determine their emission limit by calculating their MC-equivalent emissions using the toxicity-weighted equation above. In the equation, the facility emissions of PCE and TCE are weighted according to their carcinogenic potency relative to that of MC. Thus, ''A'' in the equation is the ratio of the URE for PCE to the URE for MC, and the ''B'' in the equation is the ratio of the URE for TCE to the URE for MC. The value of ''A'' is either 1.5 or 12.5, depending on whether we use the OPPTS URE or the CalEPA URE for PCE. The value for ''B'' is 4.25. We believe there may be other approaches to arriving at emissions alternatives for multiple HAP use and we request comment on the use of the MC-equivalency method, or other possible calculation methods that we should consider, when establishing emission limits for facilities using more than one of the listed HAP solvents. We also request comment on whether the OPPTS URE, the CalEPA URE or some other value should be used in the implementation of the emission cap chosen for the final rule.

Compliance with the emission limit is demonstrated by determining the annual PCE, TCE, and MC emissions for all cleaning machines at the facility. There is no additional equipment monitoring or work practice requirements associated with the facility-wide annual emissions limit. Annual emissions of these HAP are determined based on records of the amounts and dates of the solvents added to cleaning machines during the year, the amounts and dates of solvents removed from cleaning machines during the year, and the amounts and dates of the solvents removed from cleaning machines in solid waste. Records of the calculation sheets showing how the annual emissions were determined must be maintained. A facility will determine compliance with the standards by

comparing their annual MC-equivalent emissions versus the level in the final rule.

We believe owners and operators currently have information available to immediately determine if they would be in compliance with today's proposed emissions limits. Current recordkeeping requirements in 40 CFR subpart T section 63.467 require each owner and operator of solvent cleaning machines to maintain, for 5 years, estimates of solvent content and annual solvent consumption for each solvent cleaning machine and any calculations showing how monthly emissions or 3-month rolling average emissions were calculated. Moreover, current reporting requirements in 40 CFR subpart T Section 63.468 include an initial notification report, an initial statement of compliance report, annual compliance reports, and an exceedance report (required only when an exceedance occurs). In the initial notification report, owners and operators disclose an estimate of the annual halogenated HAP solvent consumption for each solvent cleaning machine. Furthermore, owners and operator submit annual reports that contain estimates of their solvent consumption for each solvent cleaning machine used during the period.

We believe that there are multiple ways in which facilities could comply with the proposed rule. Our analysis also shows that some affected facilities can easily reduce emissions and risks through solvent switching. Solvent switching, in this case, is switching from a high risk solvent to one with lower health risks. Facilities can also reduce emissions by reducing solvent use, and by using careful work practices and traditionally available control options to further reduce emissions. Increased diligence in controlling lids, installing freeboard chillers, increased drying times, installing closed loop systems, and increasing the freeboard ratio would allow the higher emitting higher risk facilities to achieve compliance with this proposed standard. The available information indicates that solvent switching, vapor capture, maintenance, reduced solvent use and limiting cleaning runs would be the primary components of any small decrease in costs.

In summary, we are proposing two options that cap facility-wide emissions at 40,000 and 25,000 kg/yr calculated as MC-equivalents.

III. Rationale for the Proposed Rule

A. What is our approach for developing residual risk standards?

Section 112(f)(2)(A) of the CAA states that if the MACT standards for a source 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-a-million, the Administrator shall promulgate [residual risk] standards * * * for such source category.''

Halogenated solvent cleaning facilities subject to the proposed amendments emit known, probable, and possible human carcinogens. The docket for today's proposed rule contains documentation of the EPA's determination that the risk to the individual most exposed to emissions from halogenated solvent cleaning is expected to exceed 1-in-a-million. Even if we were to quantitatively consider the uncertainty and variability in the exposure and modeling assumptions used to derive our estimate of the risk to the individual most exposed, such an analysis is unlikely to change any decisions that would be made based on that level of risk.

Following our initial determination that the individual most exposed to emissions from the source category considered exceeds a 1-in-a-million individual cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable risk and ample margin of safety. We followed the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations.[1] Our approach for this source category is the same approach outlined in the National Emission Standards for the Benzene NESHP Final Rule, (54 FR 38044, September 14, 1989.

B. How did we estimate residual risk?

The EPA's ''Residual Risk Report to Congress'' (EPA–453/R–99–011) provides the general framework for conducting risk assessments to support decisions made under the residual risk program. The approach used to assess the risks associated with our halogenated solvent cleaning facilities is consistent with the technical approach and policies described in the Residual Risk Report to Congress. Details of the risk assessment performed in support of this proposal are presented below and provided in the risk document in the rulemaking docket.

1. How did we estimate the emission and stack parameters for these sources?

Three sources of data were used to characterize the source category for the residual risk assessment: EPA's 1999 National Emissions Inventory (NEI) database; a sample of MACT compliance reports obtained from states and EPA regions; and information compiled from Clean Air Act Title V permits. Together, these sources provided data for 2,672 unique cleaning machines at 1,167 unique facilities. The 1,167 facilities represent approximately 61 percent of the 1,900 total facilities estimated to be in the source category.

The majority of the data, approximately 90 percent, were obtained from the 1999 NEI database, (*i.e.*, the NEI provided data on 1,093 facilities). The types of data obtained from the NEI database include machine type (from SCC codes and unit descriptions), HAP emissions data, and stack characteristics. The compliance reports collected for the residual risk assessment provided information for 195 cleaning machines at 96 facilities. The types of data obtained from the compliance report include machine types, machines sizes, solvent consumption rates, HAP emissions data, compliance options, and control equipment choices. We gathered machine-specific data for continuous web cleaning machines from Title V permits and other sources. These data, which included 74 cleaning machines at seven facilities, were added to the cleaning machine data obtained from compliance reports.

Halogenated solvent cleaning machines are co-located with many and diverse types of industries. An analysis of MACT source category codes in the 1999 NEI data found that approximately 74 percent of the 1,093 halogenated solvent cleaning sources in our database are co-located with at least one other source category. Approximately 80 percent of the halogenated solvent emissions from solvent cleaning machines occurred at facilities where other source categories appeared to be co-located. However, because of the diversity of co-located source categories, this risk assessment evaluated the emissions coming from the degreasing operations only and did not consider emissions of HAPs that were identified

[1] This is confirmed by the Legislative History to CAA Section 112(f); see, *e.g.*, ''A Legislative History of the Clean Air Act Amendments of 1990,'' vol. 1, page 877 (Senate Debate on Conference Report) ''stating that: * * * the managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the ''*Residual Risk Report to Congress*, March 1999. EPA–453/R–99–001, p. ES–11)''.

for co-located, non-degreasing operations.

The residual risk assessment used HAP emissions data from the assessment database described above, (*i.e.*, the 1,167 facilities). These data were used to estimate the baseline residual risks for the facilities in the category and to evaluate regulatory options developed to look at further HAP emission reductions. Nearly all of the data reflects actual emissions (details of how EPA estimated emissions are discussed in the Risk Assessment for Halogenated Solvent Cleaning Source Category {Risk Assessment Support Document} located in the docket for this proposed rulemaking). In the few instances where we had the data to estimate the MACT allowable emissions and to compare those estimates with the emissions reported in NEI, the allowable emissions were, on average, a factor of 2 higher.

Compliance with the 1994 MACT is accomplished using one of three compliance options. Only two of the compliance options are based on a numerical limit and would allow estimates of MACT allowable emissions to be calculated if information on machine size were available. For these compliance options, allowable emission rates may exceed actual emissions. For the control equipment compliance option which does not include a numerical emission limit, allowable emissions cannot be estimated but could be considered equivalent to actual emissions. Approximately 58 percent of the facilities in our assessment (*i.e.*, those using the control equipment compliance option) would fall into this category.

Data obtained from MACT compliance reports required processing to prepare emissions rates for use in the residual risk assessment. The types of data and level of detail in the compliance reports varied depending upon which of the three MACT compliance options were chosen, the specific report type available (*e.g.*, initial notification report, annual compliance reports) available, and the report format. To use as much of the available information as possible, emission rate estimation methods were developed for various combinations of available data (see Appendix A in the Risk Assessment Support Document for details). These methods were used to estimate actual emissions rates for each cleaning machine. If more than one machine existed at a facility, the machine-level emission estimates were added together to yield facility-level totals.

NEI provides emission data for each HAP and emission point at a source and are reported in kilograms per year. For the residual risk assessment, NEI emission rates were used as obtained from NEI. No further processing of the data (*e.g.*, to standardized units) was needed. However, total facility-level emissions were calculated for each HAP when sources had multiple degreasing emission points (*i.e.*, multiple degreasing machines).

To fully represent the national coverage of these sources, we scaled results from the 1,167 facilities identified in our assessment database to the 1,900 facilities currently estimated to be in the source category. When this was done, the total estimated HAP emissions from the source category were approximately 16,000 tons per year. These emissions consist of 38 percent TCA, 35 percent TCE, 15 percent PCE, and 12 percent MC. The total estimated carcinogenic HAP emissions (MC, TCE and PCE) from the source category are approximately 9,700 tons/year.

MC emissions in 1999 were just over 1,300 tons from about 218 facilities, while in 2002, about 400 tons were emitted from 194 facilities, representing about a 70 percent decrease in emissions. About 11 percent of facilities using MC in 1999 ceased using MC or ceased degreasing operations altogether.

In 1999, TCE emissions were 3,000 tons from about 320 facilities. In 2002, TCE emissions had decreased 24 percent to 2,300 tons; however, the number of facilities using TCE increased 10 percent to 357.

In 1999, PCE emissions were estimated at about 1,300 tons from about 200 facilities, however by 2002, PCE emissions had increased approximately 73 percent to about 2,200 tons. There was a 10 percent drop in the number of facilities using PCE in 2002.

In 1999, about 3,700 tons of TCA were emitted from about 565 facilities. In 2002, TCA emissions were about 2,300 tons from 473 facilities, representing a 38 percent decrease in emissions and a 16 percent decrease in facilities using TCA.

In 1991, TCA dominated use with 62 percent of the halogenated solvent degreasing demand. By 1998, the demand for TCA had decreased by 87 percent. In a critical period between 1991 and 2002, TCA was being phased out while remaining stock-piles at facilities with non-essential activities were being used until depleted. In the 2002 NEI, there were decreases in emissions of TCA, MC and TCE (by about 1,400 tons, 900 tons, and 700 tons, respectively) compared to 1999 NEI). From 1999 to 2002, emissions of PCE increased 73 percent (by about 900 tons). Overall emissions data for the total of all four HAP from 1999 to 2002 indicated a 23 percent reduction in total emissions and an 8 percent decrease in the number of facilities.

Therefore, although it appears that between 1999 and 2002, decreases in use of TCA, MC and TCE were partially offset by increases in PCE use. This was due to switching HAP solvents, switching to other non-HAP cleaning technologies, and elimination of solvent cleaning altogether.

2. How did we estimate the atmospheric dispersion of emitted pollutants?

A nationwide, multi-facility version of EPA's Human Exposure Model, HEM-Screen, was used to assess chronic exposure and risk. HEM-Screen contains an atmospheric dispersion model with meteorological data and year 2000 population data at the census block level from the U.S. Bureau of Census. HEM-Screen includes meteorological data for 348 stations across the U.S. The model selects the meteorological data for the station closest to each facility and uses this to estimate long-term (*i.e.,* annual average or greater) ambient concentrations of pollutant air emissions for nodes on a radial grid surrounding each facility. HEM-Screen then estimates concentrations at individual census block centroid locations within this grid from the modeled concentration results for grid nodes.

For assessment of risk and hazard from chronic exposures, it was assumed that the total annual emissions derived for each facility were evenly distributed over the course of a year (*i.e.,* a constant emission rate).

Although the HEM-Screen model can accommodate source-specific release parameters, the same values were used for stack height, stack diameter, exit gas velocity, and exit gas temperature for all sources. The release parameters used for the risk assessment were derived from data obtained from the 1999 NEI. All emissions in the analysis were modeled as point source releases emitted from vertical stacks. The 1999 NEI includes release parameters for approximately 611 (out of the 1,093) facilities. The arithmetic mean values for each parameter were used in this analysis as representative values for stack height, stack diameter, exit gas velocity, and exit gas temperature. A maximum modeling radius of 20 km around each facility was used, and flat terrain was assumed for all facilities (*e.g.*, no complex terrain was included in the modeling).

No adjustments were made to the estimated ambient concentrations for reactivity of the HAPs being assessed. The exposures of most interest for this chronic assessment (*i.e.,* exposures that occur at the point of maximum impact and other exposures that result in appreciable cancer risks) occur in the immediate vicinity of the source and within a short time period of release (*i.e.,* minutes). Therefore, the impact of reactivity of the HAPs is relatively insignificant in the context of this exposure scenario.

3. How were cancer and noncancer risks estimated?

The residual risk analysis addresses halogenated solvent cleaning machines subject to the 1994 MACT standards (40 CFR Part 63, subpart T) and estimates potential risks due to HAP emissions from sources that emit one or more of the regulated HAPs that are still used (*i.e.,* MC, PCE, TCE and TCA). The risk assessment did not include the HAPs carbon tetrachloride and chloroform because their use was phased out in 1996.

The assessment only considered the inhalation pathway as the primary route of exposure for humans because all of the four remaining HAPs are highly volatile compounds. In addition, multimedia fugacity modeling results indicate that the majority (over 99 percent) of each of these four source category HAP partitions preferentially to air rather than water, soil, or sediment (Risk Assessment Support Document). Some persistent and bioaccumulative (PB) substances can also pose human health risks via exposure pathways other than inhalation. EPA has developed a list of PB HAPs based on information developed under the Pollution Prevention Program, the Great Waters program, and the Toxics Release Inventory and additional analysis conducted by OAQPS. None of the four HAPs found in halogenated solvent cleaning machine vapors are included on this list. Consequently, exposures to these four HAPs via non-inhalation pathways were assumed to be minimal for this source category, and a quantitative risk characterization for multi-pathway exposures to humans was not carried out as a part of the residual risk assessment.

We evaluated the potential for these HAPs to pose risks to the environment by conducting a screening-level ecological risk assessment for the baseline scenario. This assessment was intended to determine if HAPs emitted from these facilities pose a risk to ecological receptors including threatened and endangered species. The scope of the ecological screen was based on the fact that the HAPs emitted are all volatile and were shown to preferentially partition to air rather than soil or water, (*i.e.,* the majority of the HAPs emitted (over 99 percent) will remain in the atmosphere rather than deposit onto soil, plants, or aqueous environments. A more detailed explanation of this screening assessment may be found in the Residual Risk support document.

The analysis estimated the potential for emissions from this source category to result in increased cancer risk and chronic and acute (*i.e.,* one-hour) non-cancer hazard. Table 2 of this preamble outlines the cancer and chronic non-cancer dose-response values we used on the analysis.

TABLE 2.—CANCER AND CHRONIC NON-CANCER DOSE-RESPONSE VALUES

HAP	Chronic reference concentration or (RfC) similar value (mg/m^3)		Cancer Unit Risk (URE) Estimate $(\mu g/m^3)^{-1}$	
	Value	Source	Value	Source
Methylene Chloride	1.0	ATSDR	4.7E–07	IRIS
Perchloroethylene	0.27	ATSDR	5.9E–06 7.1E–07	CAL and OPPTS
Trichloroethylene	0.6	CAL	2.0E–06	CAL
1,1,1,-Trichloroethane	1.0	CAL	–	–

Notes:
Source: EPA's air toxics Web site at *http://www.epa.gov/ttn/atw/toxsource/summary.html,* table 1 (values for assessing long-term inhalation risks) dated February 28, 2005. Specific source abbreviations: IRIS = EPA's Integrated Risk Information System; ATSDR = Agency for Toxic Substances and Disease Registry: CAL = California Environmental Protection Agency; OPPTS = Office of Prevention, Pesticides and Toxic Substances. The dash (–) for 1,1,1,-trichloroethane indicates that there are no data available at this time to indicate that this HAP is a carcinogen: the current EPA weight-of-evidence for carcinogenicity for this HAP is "D" (not classifiable). This HAP was not considered in the risk analysis for carcinogenic effects.

Estimates of maximum individual cancer risk and chronic noncancer hazard index (HI) were calculated for each census block around each source by multiplying the long-term concentrations at each block by the appropriate cancer URE and summing or by dividing those concentrations by the appropriate reference concentration (RfC) and summing, respectively. The total number of people exposed at various risk and chronic HI levels were compiled to provide a distribution of population risks.

Acute (short-term) exposures to HAPs were estimated using EPA's SCREEN3 model. SCREEN3 is a single source Gaussian plume model which predicts the off-site maximum, short-term (one-hour) ambient concentrations of emitted HAPs at any distance from the source irrespective of population locations. To estimate maximum short-term emission rates, annual emission rates were adjusted using an assumed operating schedule of 8 hours/day, 260 days/year. The receptor location evaluated for the acute exposure analysis assumed that individuals may spend brief amounts of time at any location around a facility even though they may not reside in those locations. The maximum one-hour ambient concentrations were compared to acute non-cancer dose-response values to obtain an estimate of the potential for acute non-cancer hazard.

4. What factors are considered in the risk assessment?

The risk assessment was designed to generate a series of risk metrics that would provide information for a regulatory decision. The metrics include both the maximum individual risk (MIR) and the population distribution of risk, the latter providing perspective on the potential public health impact by addressing each of the following questions:

• How many people living around the halogenated solvent cleaning facilities have potential risks greater than 1-in-a-million and other risk levels?

• What is the estimated cancer incidence in the population due to emissions from these facilities?

Background exposures from other local or long-distance sources were not considered in the determination of incremental residual risk. To estimate the maximum individual risk (MIR), we assumed that people were continuously exposed for a lifetime of 70 years to the model-predicted ambient concentration at a census block around that facility. To better estimate the distribution of exposures and risks across the population, we developed an approach using a Monte Carlo simulation method (see Appendix F of the Risk Assessment Support Document for details) which accounts for variations in residency time.

C. What are the results of the baseline risk assessment?

The baseline residual risk assessment for the halogenated solvent cleaning source category used HAP emissions data from an assessment database that included 1,167 sources. This assessment database represents approximately 61 percent of the 1,900 facilities in the source category. Estimates of maximum individual cancer risk and chronic non-cancer hazard as well as distributions of cancer risks and noncancer hazards across the exposed populations were calculated for each facility. Results presented in this section have been scaled-up proportionally to reflect results for the 1,900 facilities in the source category. In addition, the risk results for the population risk distributions are estimated to reflect varying exposure durations due to the variability in residency times.

Table 3 of this preamble summarizes the estimated lifetime cancer risk results for the baseline level of emissions. The table shows the number of people in the exposed population and the number of halogenated solvent cleaning facilities that are associated with various levels of lifetime cancer risk. Depending on which cancer potency value is used for PCE, the highest risk to an individual living in the vicinity of any of the halogenated solvent cleaning facilities (the MIR) is between 90-in-a-million and about 200-in-a-million. For the exposed population within 20 kilometers to the facilities, the number of people with risks greater than or equal to 1-in-a-million is as high as 5,900,000 people (using the CalEPA URE for PCE), with between zero and 90 of these exposed to risks greater or equal to 100-in-a-million. The annual cancer incidence is estimated to be between 0.2 and 0.4 cases per year. The numbers of facilities in the source category which pose various levels of maximum individual lifetime cancer risks are presented in Table 3 of this preamble (using the CalEPA potency for PCE). These results show that source category emissions from 539 facilities (approximately 28 percent of the sources in the source category) were estimated to pose a maximum incremental increase in lifetime cancer risk at or above 1-in-a-million. Of the 539 facilities, 124 were found to pose a maximum cancer risk greater than or equal to 10-in-a-million and seven of these facilities were estimated to pose a maximum cancer risk of 100-in-a-million or more. Six-hundred ninety facilities emit only the non-carcinogen TCA and, therefore, pose no cancer risk. The estimated numbers of facilities above each risk level will decrease using the OPPTS URE for PCE.

TABLE 3.—POPULATION RISK DISTRIBUTION AND NUMBER OF FACILITIES AT VARIOUS LEVELS OF RISK—BASELINE (SCALED TO NATIONAL LEVEL)[1]—USES CALEPA CANCER POTENCY FOR PCE[6]

Estimated lifetime cancer risk (in-a-million)	National-scale population[2 3]	Number of facilities in the source category with maximum estimated risk at the Specified level[4]
≥100	86	7
≥10 to < 100	42,000	117
≥1 to < 10	5,900,000	415
<1 or no cancer risk (*i.e.,* emit non-carcinogen only)	200,000,000	[5] 1,361

[1] Represents the estimated numbers of people residing in census blocks with concentrations associated with risks at the designated risk level.
[2] National-scale population estimated for this source category by multiplying the populations at the specified cancer risk level by 1,900/1,167. Population counts have been rounded.
[3] These population numbers are estimated to reflect residency time (exposure duration) variations.
[4] Estimated by multiplying the number of sources at the specified cancer risk level (in Table B–1 of the Risk Assessment Support Document) by 1,900/1,167.
[5] Calculated as 671 (sources at < 1 in-a-million risk) plus 690 (sources that emit the non-carcinogen TCA only).
[6] Use of OPPTS URE for PCE will lower risk impacts.

We also evaluated the potential for adverse health effects other than cancer. Calculated chronic noncancer HIs were below 1 for all 1,167 facilities included in the risk assessment. The highest HI was estimated to be 0.2. Given these results, it is expected that chronic non-cancer HIs would be below one for all 1,900 facilities in the source category.

An ecological screening assessment to assess the inhalation risk to potential terrestrial receptors was conducted to determine if there were any potentially significant ecological effects that warranted a more refined level of analysis. Maximum long-term air concentrations of HAPs at the most exposed census block centroid were used as the exposure concentrations, and estimated exposure concentrations were compared to health protective ecological toxicity screening values. Calculated hazard quotients associated with terrestrial ecological receptors were well below one for all HAPs at all facilities. Because of the health-protective assumptions used in this assessment, and the fact that these HAPs are not persistent, bioaccumulative, or likely to deposit on soil, plants, or water, it is believed that the ecological screening values developed would also be protective of ecological receptors that are threatened or endangered.

We acknowledge that there are uncertainties, as well as conservatism in various aspects of risk assessment due to the use of some modeling and exposure assumptions. Specific possible

uncertainties in the risk assessment include: The size of the source category, use of actual versus allowable emissions, lack of source specific data on peak emissions, and modeling uncertainties (*e.g.*, meteorology, emission point locations, release parameters, urban versus rural dispersion, population size and exposure, co-location issues, and dose response values). A detailed analysis of each of the possible sources of uncertainty in the risk analysis is contained in the Risk Assessment Support Document, available in the docket for this rulemaking.

D. What is our proposed decision on acceptable risk?

In the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989), the first step of the ample margin of safety framework 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, September 14, 1989), quoting the Vinyl Chloride decision, recognizing that our world is not risk-free.

In the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989), we determined that a maximum individual risk of approximately 100-in-a-million should ordinarily be the upper end of the range of acceptable risks associated with an individual source of emissions. We defined the maximum individual risk as 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 health protective assumptions, such as continuous exposure for 24 hours per day for 70 years. We acknowledge that maximum individual 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 risk as a metric for determining acceptability, the Agency acknowledged in the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989), 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-a-million provides a benchmark for judging the acceptability of maximum individual risk, but does not constitute a rigid line for making that determination. In establishing a presumption for the acceptability of maximum individual risk, rather than a rigid line for acceptability, we explained in the Benzene NESHAP that risk levels should also be weighed with a series of other health measures and factors, discussed below.

We estimate that the maximum individual lifetime cancer risk (discussed below) associated with the 1994 national emission standards for halogenated solvent cleaning is between 90 and 200-in-a-million. In making the decision on the acceptability of the MIR risk level seen in this assessment, the Benzene NESHAP explains that additional factors may be considered along with the MIR. These factors can include the number of people exposed within each individual lifetime risk range, associated incidence of cancer, the policy assumptions and uncertainties, the weight of the scientific evidence for human health effects and other quantified or unquantified health effects. The principal reasons that lead us to believe that the MIR is acceptable are the following: the maximum risk could be as high as 90 to 200 in-a-million, just above the presumptive acceptable level; at least 95 percent of the exposed population have risks below 1-in-a-million; at most, only about 90 people in the exposed population near only 7 of the 1,900 facilities are estimated to be exposed at risk levels above 100 in-a-million; and the annual incidence of cancer resulting from the limits in the 1994 national emission standards is between 0.2 and 0.40 cases per year. In addition, no significant noncancer health effects or adverse ecological impacts are anticipated at this level of emissions.

Therefore, we have decided that the risks associated with the limits in the 1994 national emission standards are acceptable.

E. What is our proposed decision on ample margin of safety?

In the second step of the ample margin of safety framework we considered setting standards at a level which may be equal to or lower than the acceptable risk level and which protects 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.

1. What risk reduction alternatives did EPA evaluate?

Six emission levels were developed to evaluate reductions in residual risk if post-MACT emissions (*i.e.*, baseline emissions) were controlled further. The emission levels are not based on specific emission control technologies or practices. The alternatives are a range of maximum facility-wide emissions levels (emission limits or ''caps''). The emission levels would apply to the total emissions from all of a facility's solvent cleaning machines that are subject to the 1994 MACT standards (40 CRF Part 63, subpart T). We believe that solvent-switching and traditional technologies and practices, implemented for further post-MACT control of HAP emissions, could achieve these emissions levels.

Emission levels for the proposed regulatory options were derived based on the risk assessment results for the baseline level. To develop the proposed risk-based alternatives, all emissions rates in the assessment database were first converted to MC-equivalents based on the relative cancer potency of the HAPs emitted. The cancer potency-weighted MC-equivalent emissions rate was calculated as the estimated emissions for the HAP in kg/yr or lb/yr times the unit risk estimate (URE) for the HAP divided by the URE for MC.

For the purpose of calculating MC-equivalent emissions as well as the risk impacts of the various control scenarios, we have used the upper end of the URE range (CalEPA) for PCE. We also describe how the risk impacts might change if the OPPTS URE is used. For purposes of implementing any control option in the final rule, we take comment on the use of the OPPTS URE, the CalEPA URE, or some other value in implementing the final rule.

The six levels are summarized below:

- 100,000 level—Sources would reduce MC-equivalent emissions to no more than 100,000 kg/yr (220,000 lbs/yr).
- 60,000 level—Sources would reduce MC-equivalent emissions to no more than 60,000 kg/yr (132,000 lbs/yr).
- 40,000 level—Sources would reduce MC-equivalent emissions to no more than 40,000 kg/yr (88,000 lbs/yr).
- 25,000 level—Sources would reduce MC-equivalent emissions to no more than the 25,000 kg/yr (55,000 lbs/yr).
- 15,000 level—Sources would reduce MC-equivalent emissions to no more than 15,000 kg/yr (33,000 lbs/yr).

• 6,000 level—Sources would reduce MC-equivalent emissions to no more than 6,000 kg/yr (13,200 lbs/yr).

Table 4 of this preamble shows that the decrease in MIR ranges from 75 percent with a 100,000 kg/yr emission level (*i.e.*, from 200-in-a-million baseline to 50-in-a-million) to 99 percent with an emission level of 6,000 kg/yr (*i.e.*, from 200-in-a-million baseline to 3-in-a-million). The corresponding annual incidence estimates decrease over the range from 35 percent for the 100,000 kg/yr emission level to 90 percent for the 6,000 kg/yr level. Likewise, there are large shifts in the number of people with risks greater than or equal to one-in-a-million to below one-in-a-million. The reduction in population with risks greater than or equal to one-in-a-million ranges from 66 percent for the 100,000 kg/yr emission level to over 99 percent for the 6,000 kg/yr level.

Table 5 of this preamble presents the number of facilities at estimated cancer risk levels for the emission levels. Baseline results are provided for comparison. Numbers represent national-scale estimates (*i.e.*, the numbers of facilities were scaled by a factor of approximately 1.6) and the higher-end of the cancer potency range (CalEPA) for PCE was used.

TABLE 4.—CANCER RISK RESULTS—BASELINE VS. EMISSION LEVELS

[Scaled to National Level]

Cancer risk results	Baseline	Emission Levels (max MC-equivalent emissions in kg/yr)					
	(no control)	100,000	60,000	Proposed option 1 40,000	Proposed option 2 25,000	15,000	6,000
Maximum Individual Risk (in-a-million)	200	50	30	20	10	8	3
Annual Incidence	0.40	0.26	0.21	0.17	0.13	0.09	0.04
Estimated Lifetime Cancer Risk (in-a-million)	Estimated National Population [1] [2]						
≥ 1 to < 10	5,900,000	2,000,000	1,200,000	630,000	200,000	200,000	8,200
≥ 10 to < 100	42,000	5,100	1,400	700	67	0	0
≥ 100	86	0	0	0	0	0	0
Total Population at ≥ 1	5,942,086	2,005,100	1,201,400	630,700	200,067	200,000	8,200

Notes:
[1] National population estimated for this source category by multiplying the populations at the specified cancer risk level by 1,900/1,167. Population counts for the individual risk bins have been rounded to two significant figures.
[2] These population numbers reflect residency time (exposure duration) variations.

TABLE 5.—NUMBER OF FACILITIES AT VARIOUS LEVELS OF RISK—BASELINE VS. EMISSION LEVELS

[Scaled to National Level]

Estimated Lifetime Cancer Risk (in-a-million)	Number of Facilities in the Source Category at the Estimated Risk Level [1]						
	Baseline	Emission Levels (max MC-equivalent emissions in kg/yr)					
	(no control)	100,000	60,000	Proposed Option 1 40,000	Proposed Option 2 25,000	15,000	6,000
≥ 100	7	0	0	0	0	0	0
≥ 10 to < 100	117	85	57	29	7	0	0
≥ 1 to < 10	415	453	477	501	492	461	239
< 1 or no cancer risk (*i.e.*, facilities emit non-carcinogen only) [2]	1,361	1,362	1,366	1,369	1,402	1,439	1,660

Notes:
[1] Estimated by multiplying the number of facilities at the specified cancer risk level by 1,900/1,167.
[2] Calculated as facilities at < 1-in-a-million risk plus 690 (facilities that emit the non-carcinogenic TCA only).

We have not at this time estimated population risks for these scenarios using the lower end of the cancer potency range (OPPTS) for PCE. However, if we had, the following would be observed:

• Baseline MIR for the source category will drop to 90, but MIR values for each of the control scenarios will remain roughly the same—this is due to the fact that, with a toxicity-equivalent emission cap, MIR becomes directly proportional to MC-equivalent emissions (see Table 4 of this preamble).

• Baseline cancer incidence will drop by about half, as will that for each of the control scenarios.

• Population numbers above 1-in-a-million will drop, but we cannot say how much.

• The numbers of facilities affected by each control scenario will drop, as some PCE emitters will already fall below the emissions cap at baseline.

For the two proposed options, we will calculate refined population and facility risk estimates using the OPPTS URE values for PCE in the final rule.

2. What are the costs of the proposed alternatives?

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 the ample margin decision, the Agency considers all of the health risk and other health information considered in the first step. Beyond that information, EPA considers additional factors relating to the appropriate level

of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. As indicated above in Tables 4 and 5 of this preamble, we developed a range of emission levels and assessed their corresponding risk to determine the public health significance of possible further control. Before selecting our two proposed options, we considered the costs of each of the six alternative emission levels in providing various degrees of emission reduction. Table 6 of this preamble summarizes the costs, emission reductions, and the incremental costs for the control alternatives. When estimating the cost impacts for the various alternatives, the CalEPA URE for PCE was used to calculate MC-equivalents. Use of the OPPTS value will reduce capital costs and solvent saving for each of the alternatives.

TABLE 6.—COSTS FOR EMISSION LEVEL OPTIONS

Emission Limit Alternative MC-equivalent kg/yr	Total Capital Costs ($ million)	Total Annualized Capital and Operation and Maintenance Cost ($ million)	Total HAP Emission Reduction (tons/yr)	Total Annual Solvent (Savings) ($ million)	Total Annual Emission Control Costs or (Savings) ($ million)	Incremental Cost per Ton of HAP ($/ton)
1,000,000	21.7	2.1	4,031	(7.4)	(5.2)	(1,292)
60,000	31.5	3.0	4,903	(9.1)	(5.9)	(826)
40,000	50.9	$4.9	5,911	(11.1)	(5.9)	16
25,000	79.8	7.6	6,778	(12.8)	(4.9)	1,156
15,000	120.7	11.5	7,674	($14.6)	(2.8)	2,400
6,000	192.9	18.3	8,595	(16.4)	2.4	5,549

To develop our cost estimates we identified a suite of traditional control alternatives that would both reduce emissions beyond the MACT and lower the cancer risk associated with the emissions. Two of the controls are retrofit controls that can be added to existing cleaning machines, three controls are solvent switching scenarios that reduce cancer risk through use of a less toxic solvent, and one control requires the replacement of existing equipment with a new vacuum-to-vacuum cleaning machine.

The development of the cost estimates for the solvent switching scenarios considered changes in the cost of the solvent, changes in solvent consumption rates, changes in energy requirements, costs for equipment modifications, and changes in productivity. Capital costs were scaled to 2004 dollars and were annualized assuming a 15-year equipment lifetime and a 7 percent interest rate. The solvent switching scenarios, their costs, and impacts are fully discussed in a separate memorandum titled ''Evaluation of the Feasibility, Costs, and Impacts of Switching from a Halogenated Solvent with a High Cancer Unit Risk Value to a Halogenated Solvent with a Lower Cancer Unit Risk Value'' (National Cost Impacts Memorandum), which is in the docket for this rulemaking.

Costs for the vacuum-to-vacuum cleaning machines are based on vendor estimates obtained in 2005. The vacuum-to-vacuum cleaning machine capital costs were based on the replacement of a solvent cleaning machine with a solvent-air interface area of 2.5 m^2, which is the average size of the solvent cleaning machines for which we have size data. Since vacuum-to-vacuum cleaning machines do not have a solvent-air interface, it was necessary to correlate the solvent-air interface area of the old machine to the cleaning capacity of the new vacuum-to-vacuum cleaning machine. The cost determination methods are contained in the National Cost Impacts Memorandum, located in the docket. Capital costs were annualized based on a 20-year equipment lifetime and a 7 percent interest rate. The 20-year equipment lifetime was determined based on information from equipment manufacturers. It was determined that a 97 percent reduction in emissions would result from switching from an existing solvent cleaning machine to a vacuum-to-vacuum cleaning machine.

The costs for the retrofit controls were based on vendor estimates obtained in 2005 (Table A–1 and Table A–2 in the National Cost Impacts Memorandum). The capital costs were based on equipment for a solvent cleaning machine with a solvent-air interface area of 2.5 m^2, which is the average size of the solvent cleaning machines in the database for which size data are available. The annualized capital costs were based on a 15-year equipment lifetime and a 7 percent interest rate. A 50 percent emission reduction is expected to result from the addition of a 1.0 Freeboard Ratio (FBR), Working Mode Cover (WC), and Freeboard Refrigeration Device (FRD) control combination. A 30 percent emission reduction is expected to result from the addition of a 1.5 FBR. These percent emission reductions were calculated using emissions reduction estimates and estimation procedures that were developed for the NESHAP.

For each control alternative, the affected facilities (*i.e.*, the facilities that must reduce emissions) were identified from the degreasing database based on whether the combined emissions of PCE, TCE, and MC exceeded the emission limit alternative being evaluated. If multiple solvents were emitted from a facility the emissions of each pollutant were weighted and totaled using equation 1.

Once the necessary percent reduction was known for each facility, the compliance methods such as solvent switching, control equipment retrofits and machine replacement were applied to each unit in order to bring each facility into compliance with the appropriate limits. We recalculated the required percent reduction after the application of each control. For facilities with multiple units, several different combinations of controls across the units often had to be tried before a level of control that met the limits was achieved. To aid in the assigning of controls to specific units, a control decision matrix was developed to provide initial guidelines on what type of control to assign. This matrix is further outlined in the National Cost Impacts Memorandum, available in the docket. The controls that are available vary depending on the cleaning machine type, the solvent, and the percent control that is required. In cases

where more than one control is available, we made a rough starting assumption regarding the distribution of units. For example, for vapor cleaning units using PCE, there are two control options available when the required reduction is between 78 percent to 99 percent—PCE to MC and a vacuum cleaning machine. In this case, we initially assumed that approximately 25 percent of the units would choose the PCE to MC option and that approximately 75 percent of the units would choose the vacuum cleaning machine option. We assumed that more would choose the vacuum cleaning machine option because it is more universally applicable. The solvent switching option will be limited relative to the other options because TCE and MC will not meet the cleaning requirements for all cleaning applications. The costs and emission reductions for all units at all facilities with emissions above the control option limits were totaled to yield the total national costs and emission reductions.

Table 6 of this preamble show that control costs increase and solvent savings increase as the emission limit is set lower. The lower the limit is established, the greater the number of units that must be controlled to achieve the limit. Emission reductions are greater when a lower limit is established, therefore, the solvent savings are greater. Total annual emission control costs range from a savings of approximately $6 million/year for the 40,000 kg and the 60,000 kg/year MC equivalent control options to a cost of $2 million/year for the 6,000 kg/year MC-equivalent control alternative. Capital costs for the six control alternatives range from approximately $22 million for the 100,000 kg/year MC-equivalent alternative to $193 million for the 6,000 kg/year MC-equivalent alternative. Annualized capital costs range from $2 million/year for the 100,000 kg/year MC-equivalent control alternative to $18 million/year for the 6,000 kg/year MC-equivalent control alternative.

Incremental costs are negative for the 100,000 kg and the 60,000 kg/year MC-equivalent alternatives at ($1,292)/ton and ($826)/ton, respectively. Incremental costs for the remaining four alternatives are positive and range from $16/ton for the 40,000 kg/year MC-equivalent alternative to $5,549 ton for the 6,000 kg/year MC-equivalent alternative.

3. What regulatory options is EPA proposing?

We are proposing two options that achieve an ample margin of safety. The co-proposed options set facility-wide emission limits that are specific to reducing MC, TCE, and PCE emissions from halogenated solvent cleaning facilities and provide an ample margin of safety. Option 1 limits facility-wide emissions of PCE, TCE and MC to 40,000 kg/yr MC-equivalent. Option 2 limits facility-wide emissions of PCE, TCE and MC to 25,000 kg/yr MC-equivalent. Our review of the data shows that these limits can be achieved if facilities improve emission control through solvent switching (switching from a high risk solvent to one of lower health risks), reducing solvent use, and investigating traditionally available options to further reduce emissions. Increased diligence in controlling lids, installing freeboard chillers, increasing drying times, installing closed loop systems, and increasing the freeboard ratio would allow the higher emitting higher risk facilities to achieve compliance with the proposed standard. The available information indicates that solvent switching, vapor capture, maintenance, reduced solvent use, and limiting cleaning runs would be the primary components of any credits that would offset costs due to reduced solvent use.

In selecting these two options, we first determined that adding a MC-equivalent based emission limit would provide an opportunity for additional risk reduction. We also determined that these two options were preferred over the 100,000 and 60,000 kg/yr options because they reduce the cancer incidence by over one half, they reduce the population exposed to cancer risks greater than one-in-a-million by over 5 million people, and both result in net annual cost savings to the industry.

We also examined the impacts to small businesses associated with the alternative emissions limits. Our analysis showed that an emission limit of 15,000 kg/yr or lower could have an impact on a significant number of small businesses. To avoid adverse impacts to small businesses, we concluded that we would not propose an emission limit option of 15,000 kg/yr or lower.

Option 1 capital costs are $51 million and total annualized cost savings of about $6 million. The net annualized cost per unit of emission reduction is a cost savings of $1,000 per ton of HAP solvent emissions avoided. Option 2 capital costs are nearly $80 million and considering solvent savings result in total annualized cost savings of nearly $5 million. As shown in the cost analysis summarized in Table 6 of this preamble, the net annualized cost of per unit of emission reduction is a savings of $724 per ton of HAP solvent emissions avoided.

In the final rule, we expect to select one of these options, with appropriate modifications in response to public comments. The emissions limit would subject the highest emitting facilities to control requirements that may require switching to a HAP solvent that has a lower URE, switching to a non-HAP solvent cleaning process, retrofit of freeboards, addition of vacuum-to-vacuum machines or use of emission control technology. A description of the two options we are proposing follows. When estimating the impacts for each of these options, the CalEPA URE for PCE was used, except where noted. Use of the OPPTS URE for PCE will change the estimated impacts.

4. Rationale for Option 1

Under the authority of Section 112(f), we are co-proposing an emission limit of 40,000 kg/yr (88,000 lbs/yr) MC-equivalent to be applicable to facilities whose emission of MC, TCE and PCE exceed this emission cap. Under CalEPA, Option 1 would reduce total HAP emissions by as much as 5,800 tons/year. Thirty-two percent of those HAP emissions, about 1,860 tons/year would be PCE, 54 percent, about 3,130 tons/year would be TCE and the remaining 14 percent, about 810 tons/year would be MC.

Under this proposed option, we estimate that approximately 90 percent of the people living within 20 km of the halogenated solvent cleaning facility, about 5.4 million people of the original 6 million people, would no longer be exposed at risk levels higher than 1-in-a-million, and the MIR would be reduced from the baseline of between 90 and 200-in-a-million (depending on URE for PCE) to about 20-in-a-million, representing an 80 to 90 percent reduction in the MIR. The cancer incidence would be reduced from the baseline of between 0.20 and 0.40 cases per year (depending on URE for PCE) down between 0.08 to 0.17 cases per year, a reduction of about 60 percent.

We anticipate that as many as 25 percent of the halogenated solvent cleaning facilities will be affected by a 40,000 kg/year MC-equivalent emission limit. These facilities emit approximately 87 percent of the total MC-equivalent source category carcinogenic emissions.

We estimate that nearly 380 halogenated solvent cleaning machines may become subject to this option. Facilities would reduce their emissions by selecting a suitable control option that might include one or more of the following: (1) Solvent switching from

PCE to MC, PCE to TCE or TCE to MC; (2) installation of vacuum to vacuum cleaning machines; (3) retrofitting a 1.5 freeboard ratio (FBR); or, (4) retrofitting of 1.5 FBR, working mode cover (WC), and freeboard refrigeration device (FRD) control combination. To achieve the emission limit of 40,000 kg/yr MC-equivalent, nearly 31 percent of the affected facilities may need to select vacuum to vacuum cleaning machines to achieve necessary emission reductions. We estimate the annualized capital costs plus the operation and maintenance (O&M) costs at nearly $4.4 million for these machines, yet with a solvent savings of nearly $8.9 million, the total annualized control costs would ultimately save the industry nearly $4.5 million for this emission control.

Nearly thirty-eight percent of the affected facilities may select either of the two retrofitting options for their cleaning machines. We estimate the annualized capital cost plus the O&M cost at nearly $520 thousand for retrofitting, yet with solvent savings of nearly $1.16 million, the total annualized control costs would ultimately save the industry nearly $640 thousand for this emission control.

The remaining 30 percent may select a solvent switching option, however, it is expected that only 6 percent of facilities may be able to switch from using PCE to using MC, yet, 17 percent of the facilities can switch from TCE to MC. We estimate the annualized capital cost plus O&M costs for solvent switching at nearly $320 thousand for solvent switching, yet with solvent savings of nearly $1.02 million, the total annualized control costs would ultimately save the industry nearly $700 thousand for this emission control.

5. Rationale for Option 2

Under the authority of Section 112(f), we are co-proposing an emission limit of 25,000 kg/yr (55,000 lbs/yr) MC-equivalent to be applicable to facilities whose emission of MC, TCE and PCE exceed this emission cap. Under Option 2, total HAP emissions would be reduced by 6,700 tons/year. Thirty percent, 2,010 tons/year of the HAP emissions reduced would be PCE, 56 percent, 3,750 tons/year TCE and the remaining 14 percent 940 tons/year would be MC.

Under this proposed option, we estimate that approximately 97 percent of the people living within 20 km of the halogenated solvent cleaning facility, about 5.8 million of the original 6 million people, would no longer be exposed at risk levels higher than 1-in-a-million, and the MIR would be reduced from the baseline of between 90 and 200-in-a-million (depending on URE for PCE) to about 10-in-a-million, representing a 90 to 95 percent reduction in the MIR. The cancer incidence would be reduced from the baseline of between 0.20 and 0.40 cases per year (depending on URE for PCE) down to between 0.06 and 0.13 cases per year, a reduction of 70 percent.

We anticipate that as many as 30 percent of the halogenated solvent cleaning facilities will be affected by a 25,000 kg/year MC-equivalent emission limit. These facilities emit approximately 92 percent of the total MC-equivalent source category carcinogenic emissions.

We estimate that nearly 500 halogenated solvent cleaning machines may become subject to this option. Facilities would reduce their emissions by selecting a suitable control option that might include one or more of the following: (1) Solvent switching from PCE to MC, PCE to TCE or TCE to MC; (2) installation of vacuum to vacuum cleaning machines; (3) retrofitting a 1.5 FBR; or, (4) retrofitting of 1.5 FBR, WC and FRD control combination.

To achieve the emission limit of 25,000 kg/yr MC-equivalent, nearly 39 percent of the affected facilities may need to select vacuum to vacuum cleaning machines to achieve necessary emission reductions. We estimate the annualized capital costs plus O&M costs at nearly $7.1 million for these machines, yet with a solvent savings of nearly $10.6 million, the total annualized control costs would ultimately save the industry nearly $34.5 million for using the vacuum cleaning machines.

Nearly 31 percent of the affected facilities may select either of the two retrofitting options for their cleaning machines. We estimate the annualized capital cost plus O&M costs at nearly $520 thousand for retrofitting, yet with solvent savings of nearly $960 thousand, the total annualized control costs would ultimately save the industry nearly $430 thousand for this emission control.

The remaining 31 percent may select a solvent switching options, however, it is expected that only 6 percent of facilities may be able to switch from using PCE to using MC and 7 percent may switch from using PCE to TCE, yet, 17 percent of the facilities can switch from TCE to MC. We estimate the annualized capital cost plus O&M costs at nearly $320 thousand for solvent switching, yet with solvent savings of nearly $1.3 million, the total annualized control costs would ultimately save the industry nearly $980 thousand for this emission control.

6. Comparison of Option 1 and 2

The Agency would conclude under this proposal that Option 1 would be the most effective in reducing risk and maximizing the cost savings associated with reducing emissions from these operations. This option would achieve an ample margin of safety by reducing MIR to 20-in-a-million and reducing cancer incidence to between 0.08 and 0.17 cases per year. Proposed Option 2 would reduce MIR to 10-in-a-million and reduce incremental cancer incidence by between 0.02 and 0.04 cancer cases per year (or 1 to 2 cancer cases every 50 years) at an additional cost of roughly one million dollars per year and also requires higher capital investment of almost $29 million dollars over Option 1. Given the uncertainties associated with these risk estimates and the relatively small incremental changes in the distribution of risk under Option 2, we are proposing under Option 1 that it is not necessary to impose the additional control required by Option 2 to provide an ample margin of safety to protect public health. The agency seeks comment on whether to base the final rule on Option 1 or Option 2.

F. What is EPA proposing pursuant to CAA section 112(d)(6)?

CAA section 112(d)(6) requires EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under CAA section 112 no less often than 8 years. We reviewed available information about the industry and talked with industry representatives to investigate available emission control technologies and the potential for additional emission reductions. Based on our review, we believe that it is not necessary to revise the GACT standards for cold batch area sources in this rulemaking. We did not identify any additional control technologies beyond those that are already in widespread use within the source category (*e.g.*, freeboard refrigeration devices, extended freeboards, working mode and downtime covers). Vacuum-to-vacuum machines, which were undemonstrated at the time of the development of the NESHAP, are now offered by several equipment vendors. The use of vacuum-to-vacuum cleaners has increased as the costs for them have declined. However, due to their batch design, relatively high cost, and typically small cleaning capacity, vacuum-to-vacuum cleaning machines are not appropriate for all applications. Therefore, our investigation did not identify any significant developments in practices,

processes, or control technologies for halogenated solvent cleaning since promulgation of the original standards in 1994. Under both options, we are proposing that these changes to the current halogenated solvent cleaning NESHAP also satisfy the requirements under our CAA section 112(d)(6) authority.

G. What is the rationale for the proposed compliance schedule?

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 CAA section 112. However, as discussed later in this section of this preamble, Congress also left in place other provisions in CAA 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, CAA 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.'' CAA 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 CAA sections 112(e)(10) and 112(f)(3), any CAA 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, CAA 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 undergo modifications to comply with a residual risk rule unreasonably early.

In addition, CAA 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 3 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, CAA 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 three year compliance period for existing sources under CAA section 112(i)(3) matches the 3-year compliance period provided for new sources subject to CAA section 112(d), (f), or (h) standards that are promulgated to be more stringent than they were proposed, as provided in CAA sections 112(i)(1) and (2).

As for new sources, there are exceptions to the general rule for existing sources under CAA section 112(i)(3), the most relevant being CAA 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 CAA 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 CAA section 112.

Even though, in 1990, Congress amended CAA section 112 to include the comprehensive provisions in subsection 112(i) regarding compliance deadlines, the enacted CAA also included provisions in CAA 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 CAA section 112(i). First, CAA 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 CAA sections 112(i)(1), (2), (3), and (7)—which explicitly reach standards established under CAA 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 CAA 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 CAA 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 CAA section 112(f)(4) fails on all these fronts for new sources.

In addition, for existing sources, CAA 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, CAA section 112(f)(4)(B) states that EPA ''may grant a waiver permitting such source a period up to 2 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 CAA section 112 rules in several respects. First, the 90-day compliance deadline for existing sources in CAA section 112(f)(4)(A) directly conflicts with the up-to-3-year deadline in CAA section 112(i)(3)(A) allowed for existing sources subject to ''any'' rule under CAA section 112. Second, the CAA 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 CAA 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 CAA section 112(i)(1), for new sources subject to any CAA section 112(d), (f), or (h) standard, and CAA section 112(i)(3), for existing sources subject to any CAA 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, CAA 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 CAA 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 CAA 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 CAA 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), CAA section 112(i)(3)(A) by its terms applies to ''any'' standard promulgated under CAA section 112, which includes those under CAA section 112(f), in allowing up to a three year compliance period for existing sources. Moreover, Congress clearly intended that the CAA section 112(i) provisions, applicable to new sources to govern compliance deadlines under CAA section 112(f) rules, notwithstanding the language of CAA section 112(f)(4). This is because CAA sections 112(i)(1) and (2) explicitly reaches the standards under CAA section 112(f). To read CAA section 112(i)(3)(B) literally as reaching only CAA section 112(d) standards, with CAA section 112(f)(4)(B) reaching CAA section 112(f) standards, leaves the question as to whether there can be compliance extensions for CAA section 112(h) standards completely unaddressed by the statute, even though it may in fact be necessary in complying with a CAA section 112(h) work practice standard to install equipment or controls. A narrow reading of the scope of CAA 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 CAA section 112(f)(2) and CAA 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 CAA 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 CAA 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 CAA section 112 amendments in conference.

Nevertheless, we are proposing a compliance deadline of 2 years for existing sources of halogenated emissions from halogenated solvent cleaning machines. We believe this proposed compliance deadline is both reasonable and 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.

IV. Solicitation of Public Comments

A. Introduction and General Solicitation

We request comments on all aspects of the proposed amendments. All significant comments received during the public comment period will be considered in the development and selection of the final rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' An economic impact analysis was performed to estimate changes in price and output for affected halogenated solvent cleaning sources using the annual compliance costs estimated for proposed Options 1 and 2. Analysis for options 1 and 2 indicate an annual cost savings due to the reduction in solvent demand. Option 2 would result in higher cost savings of the options presented. For more information, refer to the economic impact analysis report that is in the public docket for this rule.

Pursuant to the terms of EO 12866, this proposed rule has been determined to be a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly, EPA has submitted this action to OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are proposing no additional requirements in this action to direct owners and operators to generate, maintain, or disclose or provide information to or for a Federal agency. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 63, Subpart T (1994 national emission standards for Halogenated Solvent Cleaning) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number (2060–0273), EPA ICR number 1652.05. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U. S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of the proposed action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

For Option 1, we estimate that 66 percent of the affected parent companies are small (186 out of 281) according to the SBA size standards. Of these small companies none of these is expected to have annualized compliance costs of more than 1 percent of sales.

For Option 2, we estimate that 66 percent of the affected parent companies are small (186 out of 281) according to the SBA size standards. Of these small companies, 3 of these are expected to have annualized compliance costs of more than 1 percent of sales. Of these 3, one is expected to have annualized compliance costs of more than 3 percent of sales.

After considering the economic impact of this proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Neither of these proposed options impose a significant impact on a substantial number of small entities. This proposed action requests public comments on the residual risk and technology review. We continue to be interested in the potential impact of the proposed action on small entities and welcome comments on issues related to such impact.

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 effect 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, CAA section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopts the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for 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 $49 million for Option 2 and $31 million for Option 1 and the total annual costs are actually savings of approximately $3.0 and $3.6 million. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that the proposed action 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 1 year. Thus, this proposed action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed action contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have Federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected halogenated solvent cleaning facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the proposed action.

In the spirit of Executive Order 13132, and consistent with EPA policy to

promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed action.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effect of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The proposed action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA 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 halogenated solvent cleaning facilities.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Under 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) 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 VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The proposed action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in the proposed action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 9, 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 T—[Amended]

2. Section 63.460 is amended by revising paragraphs (c), (d), and (g) and adding paragraph (i) to read as follows:

§ 63.460 [Amended]

* * * * *

(c) Except as provided in paragraph (g) and (i) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction after November 29, 1993 shall achieve compliance with the provisions of this subpart, except for § 63.471, immediately upon start-up or by December 2, 1994, whichever is later.

(d) Except as provided in paragraph (g) and (i) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction on or before November 29, 1993 shall achieve compliance with the provisions of this subpart, except for § 63.471, no later than December 2, 1997.

* * * * *

(g) Except as provided in paragraph (i), each continuous web cleaning machine subject to this subpart shall achieve compliance with the provisions of this subpart, except for § 63.471, no later than December 2, 1999.

* * * * *

(i) The compliance date for the requirements in § 63.471 depends on the date that construction or reconstruction commences.

(1) Each facility with solvent cleaning machines that were constructed or reconstructed before [Date proposal is published in the **Federal Register**], shall be in compliance with the provisions of this subpart [2 years after date final rule is published in the **Federal Register**] or immediately upon startup, whichever is later.

(2) Each facility with solvent cleaning machines that were constructed or reconstructed on or after [Date proposed rule is published in the **Federal Register**] and before [Date final rule is published in the **Federal Register**], shall be in compliance with the provisions of this subpart on [Date final rule is published in the **Federal Register**] or immediately upon startup, whichever is later.

(3) Each facility with solvent cleaning machines that were constructed or reconstructed on or after [Date final rule is published in the **Federal Register**], shall be in compliance with the provisions of this subpart immediately upon startup.

* * * * *

3. Section 63.471 is added to subpart T to read as follows:

§ 63.471 Facility-Wide Standards.

(a) Each owner or operator of a solvent cleaning machine, except cold batch area source cleaning machines, shall comply with the requirements specified in paragraphs (1) and (2) of this section.

(1) Maintain a log of solvent additions and deletions for each solvent cleaning machine.

(2) Ensure that the total emissions for all solvent cleaning machines at the facility are equal to or less than the facility-wide 12-month rolling total emission limit presented in Table 6 of this preamble as determined using the procedures in § 63.471(b).

TABLE 6.—FACILITY-WIDE EMISSION LIMITS FOR FACILITIES WITH SOLVENT CLEANING MACHINES

Solvents emitted	Proposed facility-wide annual emission limits in kg—option 1	Proposed facility-wide annual emission limits in kg—option 2
PCE only	[a] 3,200 [b] (26,700)	[a] 2,000 [b] (16,700)
TCE only	10,000	6,250
MC only	40,000	25,000
Multiple solvents—Calculate the MC-weighted emissions using equation 1.	40,000	25,000

[a] PCE emission limit calculated using CalEPA URE.
[b] PCE emission limit calculated using OPPTS URE.

Note: In the equation, the facility emissions of PCE and TCE are weighted according to their carcinogenic potency relative to that of MC. The value of A is either 1.5 or 12.5, depending on whether we use the OPPTS URE or the CalEPA URE for PCE. The value for B is 4.25.

$$WE = (PCE \times A) + (TCE \times B) + (MC) \qquad (9)$$

Where:

WE = Weighted 12-month rolling total emissions in kg (lbs).

PCE = 12-month rolling total PCE emissions from all solvent cleaning machines at the facility in kg (lbs).

TCE = 12-month rolling total TCE emission from all solvent cleaning machines at the facility in kg (lbs).

MC = 12-month rolling total MC emissions from all solvent cleaning machines at the facility in kg (lbs).

(b) Each owner or operator of solvent cleaning machines shall on the first operating day of every month, demonstrate compliance with the facility-wide emission limit on a 12-month rolling total basis using the procedures in paragraphs (1) through (5) of this section. (1) Each owner or operator of a solvent cleaning machine shall, on the first operating day of every month, ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that has been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions as specified in paragraphs (2) and (3) of this section. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

(2) Each owner or operator of a solvent cleaning machine shall, on the first operating day of the month, using the records of all solvent additions and deletions for the previous month, determine solvent emissions (E_{unit}) from each solvent cleaning machine using equation 10:

$$E_{unit} = SA_i - LSR_i - SSR_i \qquad (10)$$

Where:

E_{unit} = the total halogenated HAP solvent emissions from the solvent cleaning machine during the most recent month i, (kilograms of solvent per month).

SA_i = the total amount of halogenated HAP liquid solvent added to the solvent cleaning machine during the most recent month i, (kilograms of solvent per month).

LSR_i = the total amount of halogenated HAP liquid solvent removed from the solvent cleaning machine during the most recent month i, (kilograms of solvent per month).

SSR_i = the total amount of halogenated HAP solvent removed from the solvent cleaning machine in solid waste, obtained as described in paragraph (b)(3) of this section, during the most recent month i, (kilograms of solvent per month).

(3) Each owner or operator of a solvent cleaning machine shall, on the first operating day of the month, determine SSR_i using the method specified in paragraph (b)(3)(i) or (b)(3)(ii) of this section.

(i) From tests conducted using EPA reference method 25d.

(ii) By engineering calculations included in the compliance report.

(4) Each owner or operator of a solvent cleaning machine shall on the first operating day of the month, after 12 months of emissions data are available, determine the 12 month rolling total emissions, ET_{unit}, for the 12-month period ending with the most recent month using equation 11:

$$ET_{unit} = \left[\sum_{j=1}^{12} E_{unit}\right] \qquad (11)$$

Where:

ET_{unit} = the total halogenated HAP solvent emissions over the preceding 12 months, (kilograms of solvent emissions per 12-month period).

E_{unit} = halogenated HAP solvent emissions for each month (j) for the most recent 12 months (kilograms of solvent per month).

(5) Each owner or operator of a solvent cleaning machine shall on the first operating day of the month, after 12 months of emissions data are available, determine the 12-month rolling total emissions, $ET_{facility}$, for the 12-month period ending with the most recent month using equation 12:

$$ET_{facility} = \left[\sum_{j=1}^{i} ET_{unit}\right] \qquad (12)$$

Where:

$ET_{facility}$ = the total halogenated HAP solvent emissions over the preceding 12 months for all cleaning machines at the facility, (kilograms of solvent emissions per 12-month period).

ET_{unit} = the total halogenated HAP solvent emissions over the preceding 12 months for each unit j, where i equals the total number of units at the facility (kilograms of

solvent emissions per 12-month period).

(c) If the facility-wide emission limit is not met, an exceedance has occurred. All exceedances shall be reported as required in § 63.468(h).

(d) Each owner or operator of a solvent cleaning machine shall maintain records specified in paragraphs (d)(1) through (3) of this section either in electronic or written form for a period of 5 years.

(1) The dates and amounts of solvent that are added to the solvent cleaning machine.

(2) The solvent composition of wastes removed from cleaning machines as determined using the procedure described in paragraph (b)(3) of this section.

(3) Calculation sheets showing how monthly emissions and the 12-month rolling total emissions from the solvent cleaning machine were determined, and the results of all calculations.

(e) Each owner or operator of a solvent cleaning machine shall submit an initial notification report to the Administrator no later than [DATE]. This report shall include the information specified in paragraphs (e)(1) through (5).

(1) The name and address of the owner or operator.

(2) The address (*i.e.*, physical location) of the solvent cleaning machine(s).

(3) A brief description of each solvent cleaning machine including machine type (batch vapor, batch cold, vapor in-line or cold in-line), solvent/air interface area, and existing controls.

(4) The date of installation for each solvent cleaning machine.

(5) An estimate of annual halogenated HAP solvent consumption for each solvent cleaning machine.

(f) Each owner or operator of a solvent cleaning machine shall submit to the Administrator an initial statement of compliance on or before [Date]. The statement shall include the information specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The name and address of the solvent cleaning machine owner or operator.

(2) The address of the solvent cleaning machine(s).

(3) The results of the first 12-month rolling total emissions calculation.

(g) Each owner or operator of a solvent cleaning machine shall submit a solvent emission report every year. This solvent emission report shall contain the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The average monthly solvent consumption for the solvent cleaning machine in kilograms per month.

(2) The 12-month rolling total solvent emission estimates calculated each month using the method as described in paragraph (b) of this section.

(3) This report can be combined with the annual report required in § 63.468 (f) and (g) into a single report for each facility.

[FR Doc. 06–6927 Filed 8–16–06; 8:45 am]

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Federal Register

Thursday,
August 17, 2006

Part VI

Office of Personnel Management

5 CFR Parts 531, 550, and 630

Locality-Based Comparability Payments and Evacuation Payments; Absence and Leave; Final Rules

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 550

RIN 3206–AL09

Locality-Based Comparability Payments and Evacuation Payments

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations concerning pay actions for employees affected by a pandemic health crisis. The interim regulations clarify the rules for determining an employee's official worksite when he or she teleworks from an alternative worksite during an emergency situation, such as a pandemic health crisis. In addition, the interim regulations permit an agency to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. These regulations are issued as part of OPM's efforts to provide agencies with guidance to ensure they are able to fulfill their critical missions while at the same time protect their employees should a pandemic health crisis occur.

DATES: *Effective Date:* The interim regulations are effective on September 18, 2006.

Comment Date: Comments must be received on or before October 16, 2006.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations concerning pay actions for employees affected by a pandemic health crisis. These interim regulations (1) clarify the rules for determining an employee's official worksite for the purpose of identifying his or her location-based pay entitlements when the employee teleworks from an alternative worksite during an emergency situation such as a pandemic health crisis and (2) authorize agencies to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from the employee's home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

Official Worksite

On May 31, 2005, OPM issued interim regulations to define the requirements for determining an employee's official worksite to identify an employee's location-based pay entitlements, including special rate supplements and locality payments (70 FR 31278). Generally, an employee's official worksite is the location of the position of record where the employee regularly performs his or her duties and the employee is entitled to the locality rate (or special rate supplement) designated for the official worksite. If the employee is covered by a telework agreement and if the employee is scheduled (while in duty status) to report at least once a week, on a regular and recurring basis, to the regular worksite for the employee's position of record, then the regular worksite is the employee's official worksite. The employee is entitled to the locality rate designated for the regular worksite. However, if a telework employee is not scheduled to report at least once a week on a regular and recurring basis to the regular worksite, the telework site is the official worksite and the employee is entitled to the locality rate designated for the telework site. (See 5 CFR 531.605(d)(1) and (2).) Under 5 CFR 531.605(d)(3), an agency may make a temporary exception to these rules in appropriate situations, such as an employee recovering from an injury or medical condition that prevents commuting to the regular worksite.

During an emergency situation, such as a pandemic health crisis, an agency may direct a telework employee to work from his or her telework site for the duration of the emergency, and the employee may be prevented from reporting at least once a week on a regular and recurring basis to the regular worksite. In these interim regulations, we are amending 5 CFR 531.605(d)(3) to clarify that an agency may make a temporary exception to the requirement that a telework employee must report at least once a week on a regular and recurring basis to the regular worksite. An agency may make a temporary exception when the telework employee is affected by an emergency situation (such as a pandemic health crisis), which temporarily prevents him or her from commuting to the regular worksite. In such emergency situations, the employee would continue to be entitled to the locality rate for the regular worksite.

Evacuation Payments

Executive agencies may authorize evacuation payments under sections 5522 and 5523 of title 5, United States Code, to employees whose departure from a place inside or outside the United States is officially authorized or ordered from any place where there is imminent danger to the lives of the employees. Section 5523(b) of title 5, United States Code, and OPM's regulations at 5 CFR 550.403(c), also provide that additional special allowances may be granted to evacuated employees to offset the direct added expenses incident to their evacuation.

These interim regulations add a new section at 5 CFR 550.409 to permit an agency to order its employees to evacuate from their worksites and perform work at home during a pandemic health crisis. The agency may designate an employee's residence (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments under 5 U.S.C. 5523. Evacuated employees may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to the grades, levels, or titles of the employees. However, the employee must have the necessary knowledge and skills to perform the assigned work. An employee's failure or refusal to perform assigned work may be a basis for terminating evacuation payments, in addition to disciplinary action.

Currently, additional special allowances, including travel expenses and per diem, may be paid to an evacuated employee to offset any direct added expenses incurred as a result of the employee's evacuation under 5 U.S.C. 5523(b) and 5 CFR 550.403(c). OPM has determined similar authority is appropriate during a pandemic health crisis. The interim regulations at 5 CFR 550.409(b) permit the head of an agency, in his or her sole and exclusive discretion, to grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incident to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

Waiver of Notice of Proposed Rule Making and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. In response to a potential pandemic influenza event, the President recently issued the Federal Government's *Implementation Plan for the National Strategy for Pandemic Influenza.* This proposal has been fashioned in furtherance of that plan. In light of the imminence of the potential threat, providing an advance notice and comment period, before these regulations become effective, would be both impracticable and against the public interest. Accordingly, a waiver of the requirements for proposed rulemaking is justified under these circumstances.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 531 and 550

Administrative practice and procedure; Claims; Government employees; Reporting and recordkeeping requirements; Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending parts 531 and 550 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5338; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.605, revise paragraph (d)(3) to read as follows:

§ 531.605 Determining an employee's official worksite.

* * * * *

(d) * * *

(3) An authorized agency official may make a temporary exception to the requirements in paragraphs (d)(1) and (2) of this section in appropriate situations of a temporary nature, such as the following:

(i) An employee is recovering from an injury or medical condition; or

(ii) An employee is affected by an emergency situation, which temporarily prevents the employee from commuting to his or her regular official worksite.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

■ 3. The authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR parts 1959–1963, p. 502.

■ 4. In subpart D, add § 550.409 to read as follows:

§ 550.409 Evacuation payments during a pandemic health crisis.

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. Under these circumstances, an agency may designate the employee's home (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments to the employee. An agency must compute the evacuation payments and determine the time period during which such payments will be made in accordance with § 550.404. An evacuated employee at a safe haven may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to his or her grade, level, or title. The employee must have the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action.

(b) The head of an agency, in his or her sole and exclusive discretion, may grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

(c) An agency may terminate evacuation payments under the conditions listed in § 550.407. An agency must make any necessary adjustments in pay consistent with § 550.408 after the evacuation is terminated.

[FR Doc. 06–6990 Filed 8–16–06; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AK61

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the use of sick leave. The final rules remove the requirement for an employee to maintain a minimum sick leave balance in his or her sick leave account in order to use the maximum amount of sick leave provided for family care and bereavement purposes. These regulations are being issued as part of OPM's effort to standardize leave policies and provide agencies with guidance on leave programs available to assist employees in the event of a pandemic health crisis.

DATES: *Effective date:* These regulations are effective on September 18, 2006.

Applicability date: These regulations apply on the first day of the first applicable pay period beginning on or after September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Sharon Dobson by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing final regulations to revise the rules concerning the use of sick leave to provide care for a family member, make arrangements necessitated by the death of a family member, or attend the funeral of a family member. The revised regulations will assist employees in balancing their work and family responsibilities and needs. These final regulations will be issued to standardize and simplify leave programs and policies to support consolidating agency human resources and payroll systems, and to continue OPM's efforts to provide agencies with timely guidance on leave programs and policies available to employees in the event of a pandemic health crisis.

On January 5, 2005, OPM issued a comprehensive package of proposed regulations to revise the rules concerning the determination of official duty station for location-based pay entitlements, compensatory time off for religious observances, hours of work and alternative work schedules, and absence and leave (70 FR 1068). The proposed regulations were issued to aid and support the standardization of pay and leave policies under the e-Payroll initiative. The proposed regulations are available at *http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_register&position=all&page=1068.*

In this final rule, OPM addresses the comments received on the proposed rules in 5 CFR part 630, subpart D, concerning the use of sick leave for family care or bereavement purposes. The 60-day comment period ended on March 7, 2005. A total of seven comments were received from five agencies, an employee organization, and an individual. We will address comments received on the proposed changes to other regulations in subsequent issuances.

Sick Leave for Family Care or Bereavement Purposes

Currently, an employee must maintain 80 hours of sick leave in his or her sick leave account to be entitled to use up to 104 hours (13 workdays) of sick leave for general family care or bereavement purposes and up to 480 hours (12 workweeks) of sick leave to care for a family member with a serious health condition. The proposed regulations modified § 630.401 to remove the requirement an employee must maintain 80 hours of sick leave in his or her sick leave account to use more than 40 hours (5 workdays) of his or her sick leave for family care or bereavement purposes. An agency recommended removing the limit altogether on the total amount of sick leave an employee may use for any family care purpose. The agency believes removing this requirement would give employees greater responsibility for managing their sick leave and would greatly simplify the administration and recordkeeping requirements related to sick leave. In addition, the agency stated that it is difficult for managers to make a distinction between sick leave for general family care or bereavement purposes and sick leave to provide care for a family member with a serious health condition.

OPM believes an annual limit of 104 hours (13 workdays) of sick leave for general family care or bereavement purposes and 480 hours (12 workweeks) of sick leave to provide care for a family member with a serious health condition is an ample amount of time for most employees to give care and attendance to family members for illness or injury when viewed in the context of other available options and entitlements. The entitlement to use sick leave for general family care or bereavement purposes and/or to provide care for a family member with a serious health condition, in conjunction with a generous annual leave system, including advance annual leave; the leave transfer and leave bank programs; flexible work schedules; telework; unpaid leave under the Family and Medical Leave Act (FMLA); compensatory time off; and compensatory time off for travel will further assist the vast majority of employees to meet their sickness-related family care needs.

An agency and an individual commented that by removing the requirement for an employee to maintain a minimum sick leave balance to use more than 40 hours of sick leave for family care purposes is contrary to the law at 5 U.S.C. 6307(d)(3). This is incorrect. The provisions of the Federal Employees Family Friendly Leave Act (Pub. L. 103–388, October 22, 1994) expired on December 21, 1997. The Federal Employees Family Friendly Leave Act amended the law to provide for a 3-year trial period to expand the purposes for which sick leave may be used by an employee, to include family care and bereavement. Under 5 U.S.C. 6311, OPM has been granted authority to prescribe regulations necessary for the administration of annual and sick leave. (See the memorandum to Directors of Personnel, CPM 97–13, on the ''Use of Sick Leave for Family Care or Bereavement Purposes'' at *http://www.opm.gov/flsa/oca/compmemo/1997_1996/cpm97–13.asp.*) Thus, OPM used its permanent regulatory authority to issue regulations to permit an employee to use sick leave to (1) care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth; (2) assist a family member who receives medical, dental, or optical examination or treatment; (3) make arrangements for or attend the funeral of a family member; or (4) care for a family member with a serious health condition.

An agency was concerned that removing the 80-hour sick leave balance requirement may result in more employees depleting their sick leave accounts and resorting to requesting advance leave or donated leave under the voluntary leave transfer and leave bank programs. The agency believes the requirement to maintain a minimum sick leave balance of 80 hours reduces the number of employee requests for advance leave and donated leave and the costs associated with administering those programs. We have not made this change. Employees continue to be responsible for managing their use of sick leave to ensure they retain enough sick leave for both personal and family needs. An employee would continue to be limited to 13 days of sick leave each leave year for general family care or bereavement purposes and a maximum of 12 weeks of sick leave each leave year to care for a family member with a serious health condition.

An agency recommended the final regulations include information on the amount of sick leave an agency may advance to an employee for family care or bereavement purposes or to provide care for a family member with a serious health condition. We agree and have added § 630.401(f) to clarify an agency may advance a maximum of 30 days of sick leave when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes related to the adoption of a child.

We also proposed amending § 630.403(b) to establish a Governmentwide policy on the time limit for the receipt of medical documentation supporting an employee's need for sick leave. We proposed this change to ensure all employees are treated equitably and to aid in establishing standardized Governmentwide pay and leave policies. The proposed regulations at § 630.403(b) would require an employee to provide administratively acceptable evidence as to the reason for his or her use of sick leave. The employee must provide such evidence no later than 15 calendar days after the date his or her agency requests documentation. An agency and an employee organization believed imposing a stringent time limitation of 15 calendar days would not be fair for employees facing extenuating circumstances, such as an employee who may not be able to obtain medical certification because of the remoteness of his or her location. We agree and have revised § 630.403(b) to require an employee to provide administratively acceptable evidence, in accordance with the agency's policy, no later than 15 calendar days after the date the agency requests such documentation. If it is not practicable to provide the requested certification, despite the employee's diligent good faith efforts, the employee must provide such certification within a reasonable period of time, but no later than 30

calendar days. This requirement is consistent with the medical certification requirements under the Family and Medical Leave Act (FMLA) provided in the regulations at 5 CFR Part 630, Subpart L.

An agency and an individual commented that providing 15 calendar days for an employee to present medical certification may conflict with the terms of a more restrictive leave policy imposed upon an individual by an agency (often referred to as ''leave restriction''). This requirement is consistent with the medical certification requirements for using leave without pay under the FMLA. Because many employees may choose to substitute their sick leave for leave without pay under the FMLA, we believe it is necessary to impose the same requirement for using sick leave that is required under the FMLA—i.e., an employee must provide administratively acceptable evidence no later than 15 days after the agency requests documentation.

Miscellaneous

In this final rule, we are removing the reporting requirements in § 630.408 to reduce the amount of information agencies must maintain on the use of sick leave for family care purposes. However, agencies are required to maintain records sufficient to ensure employees do not exceed their entitlement to sick leave for family care purposes. We are also deleting the procedures in former § 630.409 for the retroactive substitution of sick leave for annual leave used for adoption-related purposes between September 1991 and September 1994, because the time limit for retroactive substitution under this section expired on September 30, 1996.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly OPM is amending 5 CFR part 630, to read as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; 630.303 also issued under 5 U.S.C. 6133(a); 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

■ 2. Part 630, subpart D is revised to read as follows:

Subpart D—Sick Leave

Sec.
630.401 Granting sick leave.
630.402 Requesting sick leave.
630.403 Supporting evidence for the use of sick leave.
630.404 Use of sick leave during annual leave.
630.405 Sick leave used in the computation of an annuity.
630.406 Records on the use of sick leave.

Subpart D—Sick Leave

§ 630.401 Granting sick leave.

(a) Subject to paragraphs (b) through (e) of this section, an agency must grant sick leave to an employee when he or she—

(1) Receives medical, dental, or optical examination or treatment;

(2) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;

(3)(i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition;

(4) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

(5) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

(6) Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave he or she normally accrues during a leave year).

(c) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraph (a)(3)(ii) of this section may not exceed a total of 480 hours (or, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week), subject to the limitation found in paragraph (d) of this section.

(d) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c) of this section to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under paragraph (c) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b) of this section.

(e) If the number of hours in the employee's tour of duty is changed during the leave year, his or her entitlement to use sick leave for the purposes described in paragraphs (a)(3) and (4) of this section must be recalculated based on the new tour of duty.

(f) An agency may advance a maximum of 30 days of sick leave to a full-time employee at the beginning of a leave year or at any time thereafter when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child. Thirty days is the maximum amount of advance sick leave an employee may have to his or her

credit at any one time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

§ 630.402 Requesting sick leave.

An employee must file an application—written, oral, or electronic, as required by the agency—for sick leave within such time limits as the agency may require. The employee must request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in § 630.401(a)(3), (4), and (6).

§ 630.403 Supporting evidence for the use of sick leave.

(a) An agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) for an absence in excess of 3 workdays, or for a lesser period when the agency determines it is necessary.

(b) An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that—

(1) The family member requires psychological comfort and/or physical care;

(2) The family member would benefit from the employee's care or presence; and

(3) The employee is needed to care for the family member for a specified period of time.

§ 630.404 Use of sick leave during annual leave.

Subject to § 630.401(b) through (e), an agency may grant sick leave to an employee during a period of annual leave for any of the purposes described in § 630.401(a).

§ 630.405 Sick leave used in the computation of an annuity.

Sick leave used in the computation of an annuity is charged against an employee's sick leave account and may not thereafter be used, transferred, or recredited. All sick leave to the credit of an employee as of the date of his or her retirement (or death) and reported to OPM for credit towards the calculation of an annuity is considered used.

§ 630.406 Records on the use of sick leave.

An agency must maintain records of the amount of sick leave used by an employee for family care purposes and to make arrangements for or attend the funeral of a family member under § 630.401(a)(3) and (4). The records must be sufficient to ensure that an employee does not exceed the limitations in § 630.401(b) and (c).

[FR Doc. 06–7005 Filed 8–16–06; 8:45 am]

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To redesignate the Mason Neck National Wildlife Refuge in Virginia as the Elizabeth Hartwell Mason Neck National Wildlife Refuge. (Aug. 12, 2006; 120 Stat. 682)

S. 250/P.L. 109–270

Carl D. Perkins Career and Technical Education Improvement Act of 2006 (Aug. 12, 2006; 120 Stat. 683)

S. 3693/P.L. 109–271

To make technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005. (Aug. 12, 2006; 120 Stat. 750)

H.R. 5683/P.L. 109–272

To preserve the Mt. Soledad Veterans Memorial in San Diego, California, by providing for the immediate acquisition of the memorial by the United States. (Aug. 14, 2006; 120 Stat. 770)

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